

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 revising provisions for the appointment of members;
13 clarifying that vacancies in the unexpired term of
14 appointed members shall be filled in the same manner as
15 the original appointment; requiring a majority vote of the
16 council for certain decisions; amending s. 259.037, F.S.;
17 establishing certain dates by which agencies managing
18 certain lands must submit certain reports and lists to the
19 Land Management Uniform Accounting Council; amending s.
20 259.105, F.S.; specifying capital project expenditures
21 eligible to receive certain proceeds from the Florida
22 Forever Trust Fund; revising legislative intent for the
23 distribution of funds from the Florida Communities Trust;
24 requiring the available point total for awarding grants to
25 public vessel access projects equal the available point
26 total for awarding grants to projects in low-income or
27 otherwise disadvantaged communities; requiring a majority
28 vote of the Acquisition and Restoration Council for

29 | certain decisions; amending s. 253.12, F.S.; clarifying
30 | that title to certain sovereignty lands that were
31 | judicially adjudicated are excluded from automatically
32 | becoming private property; amending s. 373.414, F.S.;
33 | revising permitting criteria for activities in surface
34 | waters and wetlands; providing a presumption of compliance
35 | for certain permit applications for activities in surface
36 | waters and wetlands; requiring the Department of
37 | Environmental Protection and third parties to prove
38 | noncompliance by a preponderance of the evidence in
39 | challenges of such permit applications; amending s.
40 | 373.427, F.S.; increasing the amount of time for filing a
41 | petition for an administrative hearing on an application
42 | to use board of trustees-owned submerged lands; amending
43 | s. 403.0876, F.S.; providing that the department's failure
44 | to approve or deny certain air construction permits within
45 | 90 days does not automatically result in approval or
46 | denial; amending s. 403.121, F.S.; excluding certain air
47 | pollution violations from certain departmental actions;
48 | clarifying when a respondent in an administrative action
49 | is the prevailing party; revising the penalties that may
50 | be assessed for violations involving drinking water
51 | contamination, wastewater, dredge, fill, or stormwater,
52 | mangrove trimming or alterations, solid waste, air
53 | emission, storage tank system and petroleum contamination,
54 | and waste cleanup; providing for assessment of
55 | administrative penalties for other violations; increasing
56 | fines relating to public water system requirements;

57 | revising provisions relating to a limit on the amount of a
58 | fine for a particular violation by certain violators;
59 | amending ss. 712.03 and 712.04, F.S.; providing an
60 | exception from an entitlement to marketable record title
61 | to interests held by governmental entities; amending ss.
62 | 373.036, 373.4135, and 373.4136, F.S.; conforming cross-
63 | references; providing an effective date.
64 |

65 | Be It Enacted by the Legislature of the State of Florida:
66 |

67 | Section 1. Paragraphs (a) and (c) of subsection (5) of
68 | section 253.034, Florida Statutes, are amended to read:

69 | 253.034 State-owned lands; uses.--

70 | (5) Each manager of conservation lands shall submit to the
71 | Division of State Lands a land management plan at least every 10
72 | years in a form and manner prescribed by rule by the board and
73 | in accordance with the provisions of s. 259.032. Each manager of
74 | conservation lands shall also update a land management plan
75 | whenever the manager proposes to add new facilities or make
76 | substantive land use or management changes that were not
77 | addressed in the approved plan, or within 1 year of the addition
78 | of significant new lands. Each manager of nonconservation lands
79 | shall submit to the Division of State Lands a land use plan at
80 | least every 10 years in a form and manner prescribed by rule by
81 | the board. The division shall review each plan for compliance
82 | with the requirements of this subsection and the requirements of
83 | the rules established by the board pursuant to this section. All
84 | land use plans, whether for single-use or multiple-use

85 | properties, shall include an analysis of the property to
86 | determine if any significant natural or cultural resources are
87 | located on the property. Such resources include archaeological
88 | and historic sites, state and federally listed plant and animal
89 | species, and imperiled natural communities and unique natural
90 | features. If such resources occur on the property, the manager
91 | shall consult with the Division of State Lands and other
92 | appropriate agencies to develop management strategies to protect
93 | such resources. Land use plans shall also provide for the
94 | control of invasive nonnative plants and conservation of soil
95 | and water resources, including a description of how the manager
96 | plans to control and prevent soil erosion and soil or water
97 | contamination. Land use plans submitted by a manager shall
98 | include reference to appropriate statutory authority for such
99 | use or uses and shall conform to the appropriate policies and
100 | guidelines of the state land management plan. Plans for managed
101 | areas larger than 1,000 acres shall contain an analysis of the
102 | multiple-use potential of the property, which analysis shall
103 | include the potential of the property to generate revenues to
104 | enhance the management of the property. Additionally, the plan
105 | shall contain an analysis of the potential use of private land
106 | managers to facilitate the restoration or management of these
107 | lands. In those cases where a newly acquired property has a
108 | valid conservation plan that was developed by a soil and
109 | conservation district, such plan shall be used to guide
110 | management of the property until a formal land use plan is
111 | completed.

112 | (a) State lands shall be managed to ensure the

113 conservation of the state's plant and animal species and ~~to~~
 114 ~~ensure~~ the accessibility of state lands for the benefit and
 115 enjoyment of all people of the state, both present and future.
 116 Beginning July 1, 2009, each newly developed or updated land
 117 management plan must ~~shall~~ provide a desired outcome, describe
 118 both short-term and long-term management goals, and include
 119 measurable objectives for achieving these ~~to achieve those~~
 120 goals. Short-term goals must ~~shall~~ be achievable within a 2-year
 121 planning period, and long-term goals must ~~shall~~ be achievable
 122 within a 10-year planning period. These short-term and long-term
 123 management goals shall be the basis for all subsequent land
 124 management activities.

125 (c) Beginning July 1, 2009, a newly developed or updated
 126 ~~the~~ land management plan must, ~~shall~~ at a minimum, contain the
 127 following elements:

- 128 1. A physical description of the land.
- 129 2. A quantitative data description of the land which
 130 includes an inventory of forest and other natural resources;
 131 exotic and invasive plants; hydrological features;
 132 infrastructure, including recreational facilities; and other
 133 significant land, cultural, or historical features. The
 134 inventory must ~~shall~~ reflect the number of acres for each
 135 resource and feature, as ~~when~~ appropriate. The inventory shall
 136 be of such detail that objective measures and benchmarks can be
 137 established for each tract of land and monitored during the
 138 lifetime of the plan. All quantitative data collected must ~~shall~~
 139 be aggregated, standardized, collected, and presented in an
 140 electronic format to allow for uniform management reporting and

141 analysis. The information collected by the Department of
 142 Environmental Protection pursuant to s. 253.0325(2) shall be
 143 available to the land manager and his or her assignee.

144 3. A detailed description of each short-term and long-term
 145 land management goal, the associated measurable objectives, and
 146 the related activities that are to be performed to meet the land
 147 management objectives. Each land management objective must be
 148 addressed by the land management plan, and where practicable,
 149 may not ~~no land management objective shall~~ be performed to the
 150 detriment of ~~the~~ other land management objectives.

151 4. A schedule of land management activities which contains
 152 short-term and long-term land management goals and ~~the~~ related
 153 measurable objective and activities. The schedule must ~~shall~~
 154 include ~~for each activity~~ a timeline for completing each
 155 activity completion, quantitative measures, and detailed expense
 156 and manpower budgets. The schedule must ~~shall~~ provide a
 157 management tool that facilitates the development of performance
 158 measures.

159 5. A summary budget for the scheduled land management
 160 activities of the land management plan. For state lands
 161 containing or anticipated to contain imperiled species habitat,
 162 the summary budget must ~~shall~~ include any fees anticipated from
 163 public or private entities for projects to offset adverse
 164 impacts to imperiled species or such habitat, which ~~fees~~ shall
 165 be used solely to restore, manage, enhance, repopulate, or
 166 acquire imperiled species habitat. The summary budget must ~~shall~~
 167 be prepared in a ~~such~~ manner that ~~it~~ facilitates computing an
 168 aggregate of land management costs for all state-managed lands

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169 using the categories described in s. 259.037(3).

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

172 253.111 Notice to board of county commissioners before
 173 sale.--The Board of Trustees of the Internal Improvement Trust
 174 Fund of the state may not sell any land to which they hold title
 175 unless and until they afford an opportunity to the county in
 176 which such land is situated to receive such land on the
 177 following terms and conditions:

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

182 Section 3. Subsections (1), (2), and (5) of section
 183 259.035, Florida Statutes, are amended to read:

184 259.035 Acquisition and Restoration Council.--

185 (1) There is created the Acquisition and Restoration
 186 Council, ~~and~~

187 ~~(a) The council shall be composed of 11 eleven voting~~
 188 ~~members, with six members appointed pursuant to paragraphs (a),~~
 189 ~~(b), and (c) four of whom shall be appointed by the Governor. Of~~
 190 ~~these four appointees, three shall be from scientific~~
 191 ~~disciplines related to land, water, or environmental sciences~~
 192 ~~and the fourth shall have at least 5 years of experience in~~
 193 ~~managing lands for both active and passive types of recreation.~~
 194 ~~They shall serve 4-year terms, except that, initially, to~~
 195 ~~provide for staggered terms, two of the appointees shall serve~~
 196 ~~2-year terms. All subsequent appointments shall be for 4-year~~

197 staggered terms. An ~~No~~ appointee may not shall serve more than
 198 two terms 6 years. A vacancy shall be filled for the remainder
 199 of an unexpired term in the same manner as the original
 200 appointment. The Governor may at any time fill a vacancy for the
 201 unexpired term of a member appointed under this paragraph.

202 (a) Four members shall be appointed by the Governor. Three
 203 of such members shall be from scientific disciplines related to
 204 land, water, or environmental sciences and the fourth member
 205 must have at least 5 years of experience in managing lands for
 206 both active and passive types of recreation.

207 (b) One member shall be appointed by the Commissioner of
 208 Agriculture from a discipline related to agriculture, including
 209 silviculture.

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

213 (d) ~~(b)~~ The five remaining members appointees shall be
 214 composed of the Secretary of Environmental Protection, the
 215 director of the Division of Forestry of the Department of
 216 Agriculture and Consumer Services, the executive director of the
 217 Fish and Wildlife Conservation Commission, the director of the
 218 Division of Historical Resources of the Department of State, and
 219 the Secretary of ~~the Department of~~ Community Affairs, or their
 220 respective designees.

221 ~~(e) One member shall be appointed by the Commissioner of~~
 222 ~~Agriculture with a discipline related to agriculture including~~
 223 ~~silviculture. One member shall be appointed by the Fish and~~
 224 ~~Wildlife Conservation Commission with a discipline related to~~

225 ~~wildlife management or wildlife ecology.~~

226 (e)~~(d)~~ The Governor shall appoint the chair of the
 227 council, and a vice chair shall be elected from among the
 228 members.

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

231 (g)~~(f)~~ The Department of Environmental Protection shall
 232 provide primary staff support to the council and shall ensure
 233 that council meetings are electronically recorded. Such
 234 recording must ~~shall~~ be preserved pursuant to chapters 119 and
 235 257.

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

239 (2) The six appointed ~~four~~ members of the council
 240 ~~appointed pursuant to paragraph (a) and the two members of the~~
 241 ~~council appointed pursuant to paragraph (c)~~ shall receive
 242 reimbursement for expenses and per diem for travel, to attend
 243 council meetings, ~~as allowed state officers and employees while~~
 244 ~~in the performance of their duties,~~ pursuant to s. 112.061.

245 (5) An affirmative vote of six ~~five~~ members of the council
 246 is required ~~in order~~ to change a project boundary or to place a
 247 proposed project on a list developed pursuant to subsection (4).
 248 Any member of the council who by family or a business
 249 relationship has a connection with all or a portion of any
 250 proposed project shall declare the interest before voting on its
 251 inclusion on a list.

252 Section 4. Paragraph (b) of subsection (3) and subsection

253 (6) of section 259.037, Florida Statutes, are amended to read:

254 259.037 Land Management Uniform Accounting Council.--

255 (3)

256 (b) Beginning July 1, 2009, each reporting agency shall
257 also:

258 1. Include a report of the available public use
259 opportunities for each management unit of state land, the total
260 management cost for public access and public use, and the cost
261 associated with each use option.

262 2. List the acres of land requiring minimal management
263 effort, moderate management effort, and significant management
264 effort pursuant to s. 259.032(11)(c). For each category created
265 in paragraph (a), the reporting agency shall include the amount
266 of funds requested, the amount of funds received, and the amount
267 of funds expended for land management.

268 3. List acres managed and cost of management for each
269 park, preserve, forest, reserve, or management area.

270 4. List acres managed, cost of management, and lead
271 manager for each state lands management unit for which secondary
272 management activities were provided.

273 5. Include a report of the estimated calculable financial
274 benefits to the public for the ecosystem services provided by
275 conservation lands, based on the best readily available
276 information or science that provides a standard measurement
277 methodology to be consistently applied by the land managing
278 agencies. Such information may include, but need not be limited
279 to, the value of natural lands for protecting the quality and
280 quantity of drinking water through natural water filtration and

281 recharge, contributions to protecting and improving air quality,
 282 benefits to agriculture through increased soil productivity and
 283 preservation of biodiversity, and savings to property and lives
 284 through flood control.

285 (6) Beginning July 1, 2010 ~~Biennially~~, each reporting
 286 agency shall also submit an operational report every 5 years for
 287 each management area for which a new or updated ~~along with an~~
 288 ~~approved~~ management plan has been approved by the board of
 289 trustees pursuant to ss. 253.034(5) and 259.032(10). The report
 290 should assess ~~the~~ progress toward achieving short-term and long-
 291 term management goals of the approved management plan, including
 292 all land management activities, and identify any deficiencies in
 293 management and corrective actions to address identified
 294 deficiencies as appropriate. This report shall be submitted to
 295 the Acquisition and Restoration Council and the division for
 296 inclusion in its annual report required pursuant to s. 259.036.

297 Section 5. Paragraphs (b), (c), (e), (f), (g), and (h) of
 298 subsection (3) and subsection (13) of section 259.105, Florida
 299 Statutes, are amended to read:

300 259.105 The Florida Forever Act.--

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

307 (b) Thirty-five percent to the Department of Environmental
 308 Protection for the acquisition of lands and capital project

309 expenditures described in this section. Of the proceeds
310 distributed ~~pursuant to this paragraph~~, it is the intent of the
311 Legislature that ~~an~~ increased priority be given to those
312 acquisitions which achieve a combination of conservation goals,
313 including protecting Florida's water resources and natural
314 groundwater recharge. At a minimum, 3 percent, and no more than
315 10 percent, of the funds allocated pursuant to this paragraph
316 shall be spent on capital project expenditures identified in the
317 management prospectus prepared pursuant to s. 259.032(9)(d)
318 during the time of acquisition, or in the management plan
319 prepared pursuant to s. 259.032(10). Such capital projects must
320 ~~which~~ meet land management planning activities necessary for
321 public access.

322 (c) Twenty-one percent to the Department of Community
323 Affairs for use by the Florida Communities Trust for the
324 purposes of part III of chapter 380, as described and limited by
325 this subsection, and grants to local governments or nonprofit
326 environmental organizations that are tax-exempt under s.
327 501(c)(3) of the United States Internal Revenue Code for the
328 acquisition of community-based projects, urban open spaces,
329 parks, and greenways to implement local government comprehensive
330 plans. From funds available to the trust and used for land
331 acquisition, 75 percent shall be matched by local governments on
332 a dollar-for-dollar basis. The Legislature intends that the
333 Florida Communities Trust emphasize funding projects in low-
334 income or otherwise disadvantaged communities and projects that
335 provide areas for direct water access and water-dependent
336 facilities that are open to the public and offer public access

337 | by vessels to waters of the state, including boat ramps and
338 | associated parking and other support facilities, by making the
339 | available point total for awarding grants to public vessel
340 | access projects equal to the available point total for awarding
341 | grants to projects in low-income or otherwise disadvantaged
342 | communities. At least 30 percent of the total allocation
343 | provided to the trust shall be used in Standard Metropolitan
344 | Statistical Areas, but one-half of that amount shall be used in
345 | localities in which the project site is located in built-up
346 | commercial, industrial, or mixed-use areas and functions to
347 | intersperse open spaces within congested urban core areas. From
348 | funds allocated to the trust, no less than 5 percent shall be
349 | used to acquire lands for recreational trail systems, provided
350 | that in the event these funds are not needed for such projects,
351 | they will be available for other trust projects. Local
352 | governments may use federal grants or loans, private donations,
353 | or environmental mitigation funds, including environmental
354 | mitigation funds required pursuant to s. 338.250, for any part
355 | or all of any local match required for acquisitions funded
356 | through the Florida Communities Trust. Any lands purchased by
357 | nonprofit organizations using funds allocated under this
358 | paragraph must provide for such lands to remain permanently in
359 | public use through a reversion of title to local or state
360 | government, conservation easement, or other appropriate
361 | mechanism. Projects funded with funds allocated to the Trust
362 | shall be selected in a competitive process measured against
363 | criteria adopted in rule by the Trust.

364 | (e) One and five-tenths percent to the Department of

365 Environmental Protection for the purchase of inholdings and
 366 additions to state parks and for capital project expenditures as
 367 described in this section. At a minimum, 1 percent, and no more
 368 than 10 percent, of the funds allocated pursuant to this
 369 paragraph shall be spent on capital project expenditures
 370 identified in the management prospectus prepared pursuant to s.
 371 259.032(9)(d) during the time of acquisition, or in the
 372 management plan prepared pursuant to s. 259.032(10). Such
 373 capital projects must ~~which~~ meet land management planning
 374 activities necessary for public access. For the purposes of this
 375 paragraph, the term "state park" means any real property in the
 376 state which is under the jurisdiction of the Division of
 377 Recreation and Parks of the department, or which may come under
 378 its jurisdiction.

379 (f) One and five-tenths percent to the Division of
 380 Forestry of the Department of Agriculture and Consumer Services
 381 to fund the acquisition of state forest inholdings and additions
 382 pursuant to s. 589.07, the implementation of reforestation plans
 383 or sustainable forestry management practices, and for capital
 384 project expenditures as described in this section. At a minimum,
 385 1 percent, and no more than 10 percent, of the funds allocated
 386 for the acquisition of inholdings and additions pursuant to this
 387 paragraph shall be spent on capital project expenditures
 388 identified in the management prospectus prepared pursuant to s.
 389 259.032(9)(d) during the time of acquisition, or in the
 390 management plan prepared pursuant to s. 259.032(10). Such
 391 capital projects must ~~which~~ meet land management planning
 392 activities necessary for public access.

393 (g) One and five-tenths percent to the Fish and Wildlife
 394 Conservation Commission to fund the acquisition of inholdings
 395 and additions to lands managed by the commission which are
 396 important to the conservation of fish and wildlife and for
 397 capital project expenditures as described in this section. At a
 398 minimum, 1 percent, and no more than 10 percent, of the funds
 399 allocated pursuant to this paragraph shall be spent on capital
 400 project expenditures identified in the management prospectus
 401 prepared pursuant to s. 259.032(9)(d) during the time of
 402 acquisition, or in the management plan prepared pursuant to s.
 403 259.032(10). Such capital projects must ~~which~~ meet land
 404 management planning activities necessary for public access.

405 (h) One and five-tenths percent to the Department of
 406 Environmental Protection for the Florida Greenways and Trails
 407 Program, to acquire greenways and trails or greenways and trail
 408 systems pursuant to chapter 260, including, but not limited to,
 409 abandoned railroad rights-of-way and the Florida National Scenic
 410 Trail and for capital project expenditures as described in this
 411 section. At a minimum, 1 percent, and no more than 10 percent,
 412 of the funds allocated pursuant to this paragraph shall be spent
 413 on capital project expenditures identified in the management
 414 plan prepared pursuant to s. 259.032(10). Such capital projects
 415 must ~~during the time of acquisition which~~ meet land management
 416 planning activities necessary for public access.

417 (13) An affirmative vote of six ~~five~~ members of the
 418 Acquisition and Restoration Council is ~~shall be~~ required ~~in~~
 419 ~~order~~ to place a proposed project on the list developed pursuant
 420 to subsection (8). Any member of the council who by family or a

421 business relationship has a connection with any project proposed
 422 to be ranked shall declare such interest before ~~prior to~~ voting
 423 for a project's inclusion on the list.

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

426 253.12 Title to tidal lands vested in state.--

427 (10) Subsection (9) does ~~shall~~ not ~~operate to~~ affect the
 428 title to lands which have been judicially adjudicated or which
 429 were the subject of litigation pending on January 1, 1993,
 430 involving title to such lands. Further, the provisions of
 431 subsection (9) do ~~shall~~ not apply to spoil islands, ~~nor~~ to any
 432 lands that ~~which~~ are included on an official acquisition list,
 433 on July 1, 1993, of a state agency or water management district
 434 for conservation, preservation, or recreation, ~~nor~~ to lands
 435 maintained as state or local recreation areas or shore
 436 protection structures, or to sovereignty lands that were filled
 437 before July 1, 1975, by any governmental entity for a public
 438 purpose or pursuant to proprietary authorization from the Board
 439 of Trustees of the Internal Improvement Trust Fund.

440 Section 7. Paragraphs (b) and (c) of subsection (1) of
 441 section 373.414, Florida Statutes, are redesignated as
 442 paragraphs (c) and (d), respectively, and a new paragraph (b) is
 443 added to that subsection to read:

444 373.414 Additional criteria for activities in surface
 445 waters and wetlands.--

446 (1) As part of an applicant's demonstration that an
 447 activity regulated under this part will not be harmful to the
 448 water resources or will not be inconsistent with the overall

449 objectives of the district, the governing board or the
 450 department shall require the applicant to provide reasonable
 451 assurance that state water quality standards applicable to
 452 waters as defined in s. 403.031(13) will not be violated and
 453 reasonable assurance that such activity in, on, or over surface
 454 waters or wetlands, as delineated in s. 373.421(1), is not
 455 contrary to the public interest. However, if such an activity
 456 significantly degrades or is within an Outstanding Florida
 457 Water, as provided by department rule, the applicant must
 458 provide reasonable assurance that the proposed activity will be
 459 clearly in the public interest.

460 (b) A permit application prepared and signed by licensed
 461 professionals, including scientists, engineers, geologists,
 462 architects, or other qualified professionals, that is determined
 463 to be complete by the department is presumed to comply with the
 464 provisions of this section. If the department determines to deny
 465 such permit application or if such permit application is
 466 challenged by a third party, the department or the challenging
 467 party has the burden of proving noncompliance by a preponderance
 468 of the evidence.

469 Section 8. Paragraph (c) of subsection (2) of section
 470 373.427, Florida Statutes, is amended to read:

471 373.427 Concurrent permit review.--

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

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

479 | (c) Any petition for an administrative hearing pursuant to
 480 | ss. 120.569 and 120.57 must be filed within 21 ~~14~~ days after ~~of~~
 481 | the notice of consolidated intent to grant or deny. Unless
 482 | waived by the applicant, within 60 days after the recommended
 483 | order is submitted, or at the next regularly scheduled meeting
 484 | for which notice may be properly given, whichever is latest, the
 485 | board of trustees shall determine what action to take on a ~~any~~
 486 | recommended order issued under ss. 120.569 and 120.57 on the
 487 | application to use board of trustees-owned submerged lands, and
 488 | shall direct the department or water management district on what
 489 | action to take in the final order concerning the application ~~to~~
 490 | ~~use board of trustees-owned submerged lands~~. The department or
 491 | water management district shall determine what action to take on
 492 | any recommended order issued under ss. 120.569 and 120.57
 493 | regarding any concurrently processed permits, waivers,
 494 | variances, or approvals required by this chapter or chapter 161.
 495 | The department or water management district shall ~~then~~ take
 496 | final agency action by entering a consolidated final order
 497 | addressing each of the concurrently reviewed authorizations,
 498 | permits, waivers, or approvals. Failure to satisfy these
 499 | timeframes may ~~shall~~ not result in approval by default of the
 500 | application to use board of trustees-owned submerged lands. Any
 501 | provisions relating to authorization to use such ~~board of~~
 502 | ~~trustees-owned submerged~~ lands shall be as directed by the board
 503 | of trustees. Issuance of the consolidated final order within 45
 504 | days after receipt of the direction of the board of trustees

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

509 Section 9. Paragraph (c) of subsection (2) of section
 510 403.0876, Florida Statutes, is amended to read:

511 403.0876 Permits; processing.--

512 (2)

513 (c) The failure of the department to approve or deny an
 514 application for an air construction permit for which a federally
 515 delegated or approved program requires a public participation
 516 period of at least 30 days, or for an operation permit for a
 517 major source of air pollution, as defined in s. 403.0872, within
 518 the 90-day ~~time~~ period shall not result in the automatic
 519 approval or denial of the permit and shall not prevent the
 520 inclusion of specific permit conditions that ~~which~~ are necessary
 521 to ensure compliance with applicable statutes and rules. If the
 522 department fails to approve or deny such an ~~operation~~ permit ~~for~~
 523 ~~a major source of air pollution~~ within the 90-day period
 524 specified in this section or in s. 403.0872, as applicable, the
 525 applicant or a party who participated in the public comment
 526 process may petition for a writ of mandamus to compel the
 527 department to act.

528 Section 10. Paragraphs (b) and (f) of subsection (2) and
 529 subsections (3), (4), (5), and (9) of section 403.121, Florida
 530 Statutes, are amended to read:

531 403.121 Enforcement; procedure; remedies.--The department
 532 shall have the following judicial and administrative remedies

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

535 (2) Administrative remedies:

536 (b) If the department has reason to believe a violation
537 has occurred, it may institute an administrative proceeding to
538 order the prevention, abatement, or control of the conditions
539 creating the violation or other appropriate corrective action.
540 Except for violations involving hazardous wastes, asbestos,
541 major sources of air pollution, or underground injection, the
542 department shall proceed administratively in all cases in which
543 the department seeks administrative penalties that do not exceed
544 \$10,000 per assessment as calculated in accordance with
545 subsections (3), (4), (5), (6), ~~and (7)~~, and (9). Pursuant to 42
546 U.S.C. s. 300g-2, the administrative penalty assessed pursuant
547 to subsection (3), subsection (4), or subsection (5) against a
548 public water system serving a population of more than 10,000 may
549 ~~shall be~~ not be less than \$1,000 per day per violation. The
550 department may ~~shall~~ not impose administrative penalties greater
551 than in excess of \$10,000 in a notice of violation. The
552 department may ~~shall~~ not have more than one notice of violation
553 seeking administrative penalties pending against the same party
554 at the same time unless the violations occurred at a different
555 site or the violations were discovered by the department after
556 ~~subsequent to~~ the filing of a previous notice of violation.

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

561 final an order is entered which does not require the respondent
 562 to perform any corrective actions or award any damages or
 563 ~~awarding no~~ penalties to the department and such order has not
 564 been reversed on appeal or the time for seeking judicial review
 565 has expired. The respondent is ~~shall be~~ entitled to an award of
 566 attorney's fees if the administrative law judge determines that
 567 the notice of violation issued by the department seeking the
 568 imposition of administrative penalties was not substantially
 569 justified as defined in s. 57.111(3) ~~s. 57.111(3)(e)~~. An ~~No~~
 570 award of attorney's fees as provided by this subsection may not
 571 ~~shall~~ exceed \$15,000.

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

576 (a) For ~~a~~ drinking water violations ~~contamination~~
 577 ~~violation~~, the department shall assess:

578 1. A penalty of \$2,000 for a maximum contaminant
 579 ~~containment~~ level ~~(MCL)~~ violation; plus \$1,000 if the violation
 580 is for a primary inorganic, organic, or radiological maximum
 581 contaminant level or ~~it is~~ a fecal coliform bacteria violation;
 582 plus \$1,000 if the violation occurs at a community water system;
 583 and plus \$1,000 if any maximum contaminant level is exceeded by
 584 more than 100 percent.

585 2. A penalty of \$3,000 for failure to obtain a clearance
 586 letter before ~~prior to~~ placing a drinking water system into
 587 service if ~~when~~ the system would not have been eligible for
 588 clearance, ~~the department shall assess a penalty of \$3,000.~~ All

589 other failures to obtain a clearance letter before placing a
590 drinking water system into service shall result in a penalty of
591 \$1,500.

592 3. A penalty of \$4,000 for failure to properly complete a
593 required public notice of violations, exceedances, or failures
594 that may pose an acute risk to human health. All other failures
595 to properly complete a required public notice relating to
596 maximum contaminant level violations shall result in a penalty
597 of \$2,000.

598 4. A penalty of \$1,000 for failure to submit a consumer
599 confidence report.

600 5. A penalty of \$2,000 for failure to provide or meet
601 licensed operator or staffing requirements at a drinking water
602 facility.

603 (b) For wastewater violations, the department shall
604 assess:

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

608 2. A penalty of \$4,000 for failure to obtain a permit to
609 construct a domestic wastewater collection or transmission
610 system.

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

615 4. For a domestic or industrial wastewater violation not
616 involving a surface water or groundwater quality violation, ~~the~~

617 ~~department shall assess~~ a penalty of \$2,000 for an unpermitted
 618 or unauthorized discharge or effluent-limitation exceedance.

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

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

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

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

631 1. A penalty of \$1,000 for unpermitted or unauthorized
 632 dredging, or filling, or unauthorized construction of a
 633 stormwater management system against the person or persons
 634 responsible; ~~for the illegal dredging or filling, or~~
 635 ~~unauthorized construction of a stormwater management system~~ plus
 636 \$2,000 if the dredging or filling occurs in an aquatic preserve,
 637 Outstanding Florida Water, ~~conservation easement,~~ or Class I or
 638 Class II surface water; ~~plus \$1,000 if the area dredged or~~
 639 filled is greater than one-quarter acre but less than or equal
 640 to one-half acre; ~~and plus \$1,000 if the area dredged or filled~~
 641 is greater than one-half acre but less than or equal to one
 642 acre; and plus \$3,000 if the person or persons responsible
 643 previously applied for or obtained authorization from the
 644 department to dredge or fill within wetlands or surface waters.

645 The administrative penalty schedule does ~~shall~~ not apply to a
 646 dredge or ~~and~~ fill violation if the area dredged or filled
 647 exceeds 1 ~~one~~ acre. The department retains the authority to seek
 648 the judicial imposition of civil penalties for all dredge and
 649 fill violations involving more than 1 ~~one~~ acre. ~~The department~~
 650 ~~shall assess~~

651 2. A penalty of \$10,000 for dredge, fill, or stormwater
 652 management system violations occurring in a conservation
 653 easement.

654 3. A penalty of \$3,000 for the failure to complete
 655 required mitigation, failure to record a required conservation
 656 easement, or for a water quality violation resulting from
 657 dredging or filling activities, stormwater construction
 658 activities, or failure of a stormwater treatment facility.

659 4. For stormwater management systems serving less than 5
 660 acres, the department shall assess a penalty of \$2,000 for the
 661 failure to properly or timely construct a stormwater management
 662 system.

663 5. In addition to the penalties authorized in this
 664 subsection, the department shall assess a penalty of \$5,000 per
 665 violation against the contractor or agent of the owner or tenant
 666 that conducts unpermitted or unauthorized dredging or filling.
 667 For purposes of this paragraph, the preparation or signing of a
 668 permit application by a person currently licensed under chapter
 669 471 to practice as a professional engineer does ~~shall~~ not make
 670 that person an agent of the owner or tenant.

671 (d) For mangrove trimming or alteration violations, the
 672 department shall assess:

673 1. A penalty of \$5,000 per violation against any person
 674 who violates ss. 403.9321-403.9333 ~~the contractor or agent of~~
 675 ~~the owner or tenant that conducts mangrove trimming or~~
 676 ~~alteration without a permit as required by s. 403.9328.~~ For
 677 purposes of this paragraph, the preparation or signing of a
 678 permit application by a person currently licensed under chapter
 679 471 to practice as a professional engineer does ~~shall~~ not
 680 constitute a violation ~~make that person an agent of the owner or~~
 681 ~~tenant.~~

682 2. For second and subsequent violations of subparagraph
 683 1., an additional penalty of \$100 for each mangrove illegally
 684 trimmed and \$250 for each mangrove illegally altered or removed,
 685 not to exceed a total of \$10,000.

686 3. For second and subsequent violations of subparagraph 1.
 687 by a professional mangrove trimmer, an additional penalty of
 688 \$250 for each mangrove illegally trimmed or altered, not to
 689 exceed a total of \$10,000.

690 (e) For solid waste violations, the department shall
 691 assess:

692 1. A penalty of \$2,000 for the unpermitted or unauthorized
 693 disposal or storage of solid waste; plus \$1,000 if the solid
 694 waste is Class I or Class III ~~(excluding yard trash)~~ or if the
 695 ~~solid waste~~ is construction and demolition debris in excess of
 696 20 cubic yards; ~~;~~ plus \$1,000 if the solid waste is disposed of
 697 or stored in any natural or artificial body of water or within
 698 500 feet of a potable water well; ~~and;~~ plus \$1,000 if the solid
 699 waste contains PCB at a concentration of 50 parts per million or
 700 greater; untreated biomedical waste; more than 1 cubic meter of

701 regulated friable asbestos material that ~~greater than 1 cubic~~
 702 ~~meter which~~ is not wetted, bagged, and covered; more than 25
 703 gallons of used oil ~~greater than 25 gallons~~; or 10 or more lead
 704 acid batteries.

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

709 3. A penalty of \$3,000 for failure to properly maintain
 710 leachate control; unauthorized burning; failure to have a
 711 trained spotter or trained operator on duty as required by
 712 department rule at the working face when accepting waste;
 713 failure to apply and maintain adequate initial, intermediate, or
 714 final cover; failure to control or correct erosion resulting in
 715 exposed waste; failure to implement a gas management system as
 716 required by department rule; or processing or disposing of
 717 unauthorized waste ~~failure to provide access control for three~~
 718 ~~consecutive inspections. The department shall assess~~

719 4. A penalty of \$2,000 for failure to construct or
 720 maintain a required stormwater management system; failure to
 721 compact and slope waste as required by department rule; or
 722 failure to maintain a small working face as required by
 723 department rule.

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

726 (f) For ~~an~~ air emission violations violation, the
 727 department shall assess a penalty of \$1,000 for an unpermitted
 728 or unauthorized air emission or an air-emission-permit

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729 exceedance; ~~plus \$1,000 if the emission results in an air~~
730 ~~quality violation,~~ plus \$3,000 if the emission was from a major
731 source and the source was major for the pollutant in violation;
732 and plus \$1,000 if the emission was more than 150 percent of the
733 allowable level.

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

736 1. A penalty of \$5,000 for failure to empty a damaged
737 storage system as necessary to ensure that a release does not
738 occur until repairs to the storage system are completed; if when
739 a release has occurred from that storage tank system; for
740 failure to timely recover free product; for failure to submit a
741 complete site assessment report; or for failure to conduct
742 remediation or monitoring activities until a no-further-action
743 or site-rehabilitation completion order has been issued. ~~The~~
744 ~~department shall assess~~

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

748 3. A penalty of \$2,000 for failure to conduct or maintain
749 required release detection; failure to timely investigate a
750 suspected release from a storage system; depositing motor fuel
751 into an unregistered storage tank system; ~~failure to timely~~
752 ~~assess or remediate petroleum contamination;~~ or failure to
753 properly install a storage tank system. ~~The department shall~~
754 ~~assess~~

755 4. A penalty of \$1,000 for failure to properly operate,
756 maintain, repair, or close a storage tank system.

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757 (h) For waste cleanup violations, the department shall
758 assess:

759 1. A penalty of \$5,000 for failure to timely assess or
760 remediate contamination; failure to provide notice of
761 contamination beyond property boundaries or complete an offsite
762 well survey; for the use or injection of substances or materials
763 to surface water or groundwater for remediation purposes without
764 prior department approval; or for the operation of a remedial
765 treatment system without prior approval by the department.

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

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

771 (4) In an administrative proceeding, in addition to ~~the~~
772 any penalties that may be assessed under subsection (3), or for
773 violations not otherwise listed in subsection (3), the
774 department shall assess administrative penalties according to
775 the following schedule:

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

778 (b) For failure to properly install, operate, maintain, or
779 use a required pollution control, collection, treatment, or
780 disposal system or device, or failure to use appropriate best
781 management practices or erosion and sediment controls, \$4,000.

782 (c) For failure to obtain a required permit or license
783 before construction or modification, \$3,000 if the facility is
784 constructed, modified, or operated in compliance with applicable

785 requirements, or \$5,000 if the facility is not constructed,
 786 modified, or operated in compliance with applicable
 787 requirements.

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

791 (e) For failure to maintain required staff to respond to
 792 emergencies; failure to conduct required training; failure to
 793 prepare, maintain, or update required contingency plans; failure
 794 to adequately respond to emergencies to bring an emergency
 795 situation under control; or failure to submit required
 796 notification to the department, \$1,000.

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

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

806 (9) The administrative penalties assessed for any
 807 particular violation may ~~shall~~ not exceed \$5,000 against any one
 808 violator, unless the violator has a history of noncompliance,
 809 the violator received economic benefit from ~~of~~ the violation ~~as~~
 810 ~~described in subsection (8) exceeds \$5,000~~, or there are
 811 multiday violations. The total administrative penalties may
 812 ~~shall~~ not exceed \$10,000 per assessment for all violations

813 | attributable to a specific person in the notice of violation.

814 | Section 11. Subsection (9) is added to section 712.03,
815 | Florida Statutes, to read:

816 | 712.03 Exceptions to marketability.--Such marketable
817 | record title shall not affect or extinguish the following
818 | rights:

819 | (9) Any right, title, or interest held by any governmental
820 | entity, including, but not limited to, the Federal Government,
821 | the state, any state agency, the Board of Trustees of the
822 | Internal Improvement Trust Fund, any water management district
823 | created pursuant to chapter 373, any county, any municipality,
824 | any school district, any special district, or any other
825 | political subdivision.

826 | Section 12. Section 712.04, Florida Statutes, is amended
827 | to read:

828 | 712.04 Interests extinguished by marketable record
829 | title.--Subject to the matters stated in s. 712.03, a such
830 | marketable record title is ~~shall be~~ free and clear of all
831 | estates, interests, claims, or charges whatsoever, the existence
832 | of which depends upon any act, title transaction, event or
833 | omission that occurred before ~~prior to~~ the effective date of the
834 | root of title. All such estates, interests, claims, or charges,
835 | however denominated, whether such estates, interests, claims, or
836 | charges are or appear to be held or asserted by a person sui
837 | juris or under a disability, whether such person is within or
838 | without the state or, ~~whether such person~~ is natural or
839 | corporate, ~~or is private or governmental~~, are hereby declared to
840 | be null and void, ~~except that this chapter shall not be deemed~~

841 ~~to affect any right, title, or interest of the United States,~~
 842 ~~Florida, or any of its officers, boards, commissions, or other~~
 843 ~~agencies reserved in the patent or deed by which the United~~
 844 ~~States, Florida, or any of its agencies parted with title.~~

845 Section 13. Paragraph (b) of subsection (7) of section
 846 373.036, Florida Statutes, is amended to read:

847 373.036 Florida water plan; district water management
 848 plans.--

849 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL
 850 REPORT.--

851 (b) The consolidated annual report shall contain the
 852 following elements, as appropriate to that water management
 853 district:

854 1. A district water management plan annual report or the
 855 annual work plan report allowed in subparagraph (2)(e)4.

856 2. The department-approved minimum flows and levels annual
 857 priority list and schedule required by s. 373.042(2).

858 3. The annual 5-year capital improvements plan required by
 859 s. 373.536(6)(a)3.

860 4. The alternative water supplies annual report required
 861 by s. 373.1961(3)(n).

862 5. The final annual 5-year water resource development work
 863 program required by s. 373.536(6)(a)4.

864 6. The Florida Forever Water Management District Work Plan
 865 annual report required by s. 373.199(7).

866 7. The mitigation donation annual report required by s.
 867 373.414(1) (c) ~~(b)~~2.

868 Section 14. Paragraph (e) of subsection (6) and subsection

869 (7) of section 373.4135, Florida Statutes, are amended to read:
 870 373.4135 Mitigation banks and offsite regional
 871 mitigation.--

872 (6) An environmental creation, preservation, enhancement,
 873 or restoration project, including regional offsite mitigation
 874 areas, for which money is donated or paid as mitigation, that is
 875 sponsored by the department, a water management district, or a
 876 local government and provides mitigation for five or more
 877 applicants for permits under this part, or for 35 or more acres
 878 of adverse impacts, shall be established and operated under a
 879 memorandum of agreement. The memorandum of agreement shall be
 880 between the governmental entity proposing the mitigation project
 881 and the department or water management district, as appropriate.
 882 Such memorandum of agreement need not be adopted by rule. For
 883 the purposes of this subsection, one creation, preservation,
 884 enhancement, or restoration project shall mean one or more
 885 parcels of land with similar ecological communities that are
 886 intended to be created, preserved, enhanced, or restored under a
 887 common scheme.

888 (e) Projects governed by this subsection, except for
 889 projects established pursuant to subsection (7), shall be
 890 subject to the provisions of s. 373.414(1) (c) ~~(b)~~1.

891 (7) The department, water management districts, and local
 892 governments may elect to establish and manage mitigation sites,
 893 including regional offsite mitigation areas, or contract with
 894 permitted mitigation banks, to provide mitigation options for
 895 private single-family lots or homeowners. The department, water
 896 management districts, and local governments shall provide a

897 written notice of their election under this subsection by United
 898 States mail to those individuals who have requested, in writing,
 899 to receive such notice. The use of mitigation options
 900 established under this subsection are not subject to the full-
 901 cost-accounting provision of s. 373.414(1) (c) ~~(b)~~1. To use a
 902 mitigation option established under this subsection, the
 903 applicant for a permit under this part must be a private,
 904 single-family lot or homeowner, and the land upon which the
 905 adverse impact is located must be intended for use as a single-
 906 family residence by the current owner. The applicant must not be
 907 a corporation, partnership, or other business entity. However,
 908 the provisions of this subsection shall not apply to other
 909 entities that establish offsite regional mitigation as defined
 910 in this section and s. 373.403.

911 Section 15. Paragraph (d) of subsection (6) of section
 912 373.4136, Florida Statutes, is amended to read:

913 373.4136 Establishment and operation of mitigation
 914 banks.--

915 (6) MITIGATION SERVICE AREA.--The department or water
 916 management district shall establish a mitigation service area
 917 for each mitigation bank permit. The department or water
 918 management district shall notify and consider comments received
 919 on the proposed mitigation service area from each local
 920 government within the proposed mitigation service area. Except
 921 as provided herein, mitigation credits may be withdrawn and used
 922 only to offset adverse impacts in the mitigation service area.
 923 The boundaries of the mitigation service area shall depend upon
 924 the geographic area where the mitigation bank could reasonably

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925 | be expected to offset adverse impacts. Mitigation service areas
926 | may overlap, and mitigation service areas for two or more
927 | mitigation banks may be approved for a regional watershed.

928 | (d) If the requirements in s. 373.414(1) (c) ~~(b)~~ and (8) are
929 | met, the following projects or activities regulated under this
930 | part shall be eligible to use a mitigation bank, regardless of
931 | whether they are located within the mitigation service area:

932 | 1. Projects with adverse impacts partially located within
933 | the mitigation service area.

934 | 2. Linear projects, such as roadways, transmission lines,
935 | distribution lines, pipelines, or railways.

936 | 3. Projects with total adverse impacts of less than 1 acre
937 | in size.

938 | Section 16. This act shall take effect July 1, 2009.