

By the Committee on Environmental Preservation and Conservation;
and Senator Constantine

592-02942-09

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1 A bill to be entitled
2 An act relating to environmental protection; amending
3 s. 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
7 of county commissioners to decide whether to acquire
8 county land being sold by the Board of Trustees of the
9 Internal Improvement Trust Fund; amending s. 259.035,
10 F.S.; increasing the maximum number of terms of
11 appointed members of the Acquisition and Restoration
12 Council; clarifying that vacancies in the unexpired
13 term of appointed members shall be filled in the same
14 manner as the original appointment; requiring a
15 majority vote of the council for certain decisions;
16 amending s. 259.037, F.S.; establishing certain dates
17 by which agencies managing certain lands must submit
18 certain reports and lists to the Land Management
19 Uniform Accounting Council; amending s. 259.105, F.S.;
20 providing that the certain proceeds from the Florida
21 Forever Trust Fund shall be spent on certain capital
22 projects within a year after acquisition rather than
23 only at the time of acquisition; requiring a majority
24 vote of the Acquisition and Restoration Council for
25 certain decisions; amending s. 253.12, F.S.;
26 clarifying that title to certain sovereignty lands
27 which were judicially adjudicated are excluded from
28 automatically becoming private property; amending s.
29 373.427, F.S.; increasing the amount of time for

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30 filing a petition for an administrative hearing on an
31 application to use board of trustees-owned submerged
32 lands; amending s. 403.0876, F.S.; providing that the
33 Department of Environmental Protection's failure to
34 approve or deny certain air construction permits
35 within 90 days does not automatically result in
36 approval or denial; amending s. 403.121, F.S.;
37 excluding certain air pollution violations from
38 certain departmental actions; clarifying when a
39 respondent in an administrative action is the
40 prevailing party; revising the penalties that may be
41 assessed for violations involving drinking water
42 contamination, wastewater, dredge, fill, or
43 stormwater, mangrove trimming or alterations, solid
44 waste, air emission, and waste cleanup; increasing
45 fines relating to public water system requirements;
46 revising provisions relating to a limit on the amount
47 of a fine for a particular violation by certain
48 violators; amending ss. 712.03 and 712.04, F.S.;
49 providing an exception from an entitlement to
50 marketable record title to interests held by
51 governmental entities; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Paragraphs (a) and (c) of subsection (5) of
56 section 253.034, Florida Statutes, are amended to read:

57 253.034 State-owned lands; uses.—

58 (5) Each manager of conservation lands shall submit to the

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

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

100 (a) State lands shall be managed to ensure the conservation
101 of the state's plant and animal species and ~~to ensure~~ the
102 accessibility of state lands for the benefit and enjoyment of
103 all people of the state, both present and future. Beginning July
104 1, 2009, each newly developed or updated land management plan
105 must ~~shall~~ provide a desired outcome, describe both short-term
106 and long-term management goals, and include measurable
107 objectives for achieving these ~~to achieve these~~ goals. Short-
108 term goals must ~~shall~~ be achievable within a 2-year planning
109 period, and long-term goals must ~~shall~~ be achievable within a
110 10-year planning period. These short-term and long-term
111 management goals shall be the basis for all subsequent land
112 management activities.

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

116 1. A physical description of the land.

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

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

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

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146 measures.

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

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

160 253.111 Notice to board of county commissioners before
161 sale.—The Board of Trustees of the Internal Improvement Trust
162 Fund of the state may not sell any land to which they hold title
163 unless and until they afford an opportunity to the county in
164 which such land is situated to receive such land on the
165 following terms and conditions:

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

170 Section 3. Subsections (1), (2), and (5) of section
171 259.035, Florida Statutes, are amended to read:

172 259.035 Acquisition and Restoration Council.—

173 (1) There is created the Acquisition and Restoration
174 Council—

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

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

196 (b) One member shall be appointed by the Commissioner of
197 Agriculture from a discipline related to agriculture including
198 silviculture.

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

202 ~~(d) (b)~~ The five remaining members appointees shall be
203 composed of the Secretary of Environmental Protection, the

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204 director of the Division of Forestry of the Department of
205 Agriculture and Consumer Services, the executive director of the
206 Fish and Wildlife Conservation Commission, the director of the
207 Division of Historical Resources of the Department of State, and
208 the secretary of the Department of Community Affairs, or their
209 respective designees.

210 ~~(c) One member shall be appointed by the Commissioner of~~
211 ~~Agriculture with a discipline related to agriculture including~~
212 ~~silviculture. One member shall be appointed by the Fish and~~
213 ~~Wildlife Conservation Commission with a discipline related to~~
214 ~~wildlife management or wildlife ecology.~~

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

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

219 (g)~~(f)~~ The Department of Environmental Protection shall
220 provide primary staff support to the council and shall ensure
221 that council meetings are electronically recorded. Such
222 recording must ~~shall~~ be preserved pursuant to chapters 119 and
223 257.

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

227 (2) The six appointed ~~four~~ members of the council ~~appointed~~
228 ~~pursuant to paragraph (a) and the two members of the council~~
229 ~~appointed pursuant to paragraph (c)~~ shall receive reimbursement
230 for expenses and per diem for travel, to attend council
231 meetings, ~~as allowed state officers and employees while in the~~
232 ~~performance of their duties,~~ pursuant to s. 112.061.

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

240 Section 4. Paragraph (b) of subsection (3) and subsection
241 (6) of section 259.037, Florida Statutes, are amended to read:
242 259.037 Land Management Uniform Accounting Council.—

243 (3)

244 (b) Beginning July 1, 2009, each reporting agency shall
245 also:

246 1. Include a report of the available public use
247 opportunities for each management unit of state land, the total
248 management cost for public access and public use, and the cost
249 associated with each use option.

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

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

258 4. List acres managed, cost of management, and lead manager
259 for each state lands management unit for which secondary
260 management activities were provided.

261 5. Include a report of the estimated calculable financial

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

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

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

288 259.105 The Florida Forever Act.—

289 (3) Less the costs of issuing and the costs of funding
290 reserve accounts and other costs associated with bonds, the

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291 proceeds of cash payments or bonds issued pursuant to this
292 section shall be deposited into the Florida Forever Trust Fund
293 created by s. 259.1051. The proceeds shall be distributed by the
294 Department of Environmental Protection in the following manner:

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

310 (e) One and five-tenths percent to the Department of
311 Environmental Protection for the purchase of inholdings and
312 additions to state parks and for capital project expenditures as
313 described in this section. At a minimum, 1 percent, and no more
314 than 10 percent, of the funds allocated pursuant to this
315 paragraph shall be spent on capital project expenditures
316 identified in the management prospectus prepared pursuant to s.
317 259.032(9)(d) during the time of acquisition, or in the
318 management plan prepared pursuant to s. 259.032(10). Such
319 capital projects must ~~which~~ meet land management planning

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320 activities necessary for public access. For the purposes of this
321 paragraph, the term "state park" means any real property in the
322 state which is under the jurisdiction of the Division of
323 Recreation and Parks of the department, or which may come under
324 its jurisdiction.

325 (f) One and five-tenths percent to the Division of Forestry
326 of the Department of Agriculture and Consumer Services to fund
327 the acquisition of state forest inholdings and additions
328 pursuant to s. 589.07, the implementation of reforestation plans
329 or sustainable forestry management practices, and for capital
330 project expenditures as described in this section. At a minimum,
331 1 percent, and no more than 10 percent, of the funds allocated
332 for the acquisition of inholdings and additions pursuant to this
333 paragraph shall be spent on capital project expenditures
334 identified in the management prospectus prepared pursuant to s.
335 259.032(9)(d) during the time of acquisition, or in the
336 management plan prepared pursuant to s. 259.032(10). Such
337 capital projects must ~~which~~ meet land management planning
338 activities necessary for public access.

339 (g) One and five-tenths percent to the Fish and Wildlife
340 Conservation Commission to fund the acquisition of inholdings
341 and additions to lands managed by the commission which are
342 important to the conservation of fish and wildlife and for
343 capital project expenditures as described in this section. At a
344 minimum, 1 percent, and no more than 10 percent, of the funds
345 allocated pursuant to this paragraph shall be spent on capital
346 project expenditures identified in the management prospectus
347 prepared pursuant to s. 259.032(9)(d) during the time of
348 acquisition, or in the management plan prepared pursuant to s.

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349 259.032(10). Such capital projects must ~~which~~ meet land
350 management planning activities necessary for public access.

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

364 (13) A majority vote ~~An affirmative vote of five members~~ of
365 the Acquisition and Restoration Council is ~~shall be~~ required ~~in~~
366 ~~order~~ to place a proposed project on the list developed pursuant
367 to subsection (8). Any member of the council who by family or a
368 business relationship has a connection with any project proposed
369 to be ranked shall declare such interest before ~~prior to~~ voting
370 for a project's inclusion on the list.

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

373 253.12 Title to tidal lands vested in state.—

374 (10) Subsection (9) does ~~shall~~ not ~~operate to~~ affect the
375 title to lands which have been judicially adjudicated or which
376 were the subject of litigation pending on January 1, 1993,
377 involving title to such lands. Further, the provisions of

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378 subsection (9) do ~~shall~~ not apply to spoil islands or ~~nor~~ to any
379 lands that ~~which~~ are included on an official acquisition list,
380 on July 1, 1993, of a state agency or water management district
381 for conservation, preservation, or recreation, ~~nor~~ to lands
382 maintained as state or local recreation areas or shore
383 protection structures, or to sovereignty lands that were filled
384 before July 1, 1975, by any governmental entity for a public
385 purpose or pursuant to proprietary authorization from the Board
386 of Trustees of the Internal Improvement Trust Fund.

387 Section 7. Paragraph (c) of subsection (2) of section
388 373.427, Florida Statutes, is amended to read:

389 373.427 Concurrent permit review.—

390 (2) In addition to the provisions set forth in subsection
391 (1) and notwithstanding s. 120.60, the procedures established in
392 this subsection shall apply to concurrently reviewed
393 applications which request proprietary authorization to use
394 board of trustees-owned submerged lands for activities for which
395 there has been no delegation of authority to take final agency
396 action without action by the board of trustees.

397 (c) Any petition for an administrative hearing pursuant to
398 ss. 120.569 and 120.57 must be filed within 21 ~~14~~ days after ~~of~~
399 the notice of consolidated intent to grant or deny. Unless
400 waived by the applicant, within 60 days after the recommended
401 order is submitted, or at the next regularly scheduled meeting
402 for which notice may be properly given, whichever is latest, the
403 board of trustees shall determine what action to take on a ~~any~~
404 recommended order issued under ss. 120.569 and 120.57 on the
405 application to use board of trustees-owned submerged lands, and
406 shall direct the department or water management district on what

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407 action to take in the final order concerning the application ~~to~~
408 ~~use board of trustees-owned submerged lands~~. The department or
409 water management district shall determine what action to take on
410 any recommended order issued under ss. 120.569 and 120.57
411 regarding any concurrently processed permits, waivers,
412 variances, or approvals required by this chapter or chapter 161.
413 The department or water management district shall ~~then~~ take
414 final agency action by entering a consolidated final order
415 addressing each of the concurrently reviewed authorizations,
416 permits, waivers, or approvals. Failure to satisfy these
417 timeframes may ~~shall~~ not result in approval by default of the
418 application to use board of trustees-owned submerged lands. Any
419 provisions relating to authorization to use such ~~board of~~
420 ~~trustees-owned submerged~~ lands shall be as directed by the board
421 of trustees. Issuance of the consolidated final order within 45
422 days after receipt of the direction of the board of trustees
423 regarding the application to use board of trustees-owned
424 submerged lands is deemed in compliance with the timeframes for
425 issuance of final orders under s. 120.60. The final order is
426 ~~shall be~~ subject to ~~the provisions of~~ s. 373.4275.

427 Section 8. Paragraph (c) of subsection (2) of section
428 403.0876, Florida Statutes, is amended to read:

429 403.0876 Permits; processing.—

430 (2)

431 (c) The failure of the department to approve or deny an
432 application for an air construction permit for which a federally
433 delegated or approved program requires a public participation
434 period of 30 days or longer, or for an operation permit for a
435 major source of air pollution, as defined in s. 403.0872, within

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

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

449 403.121 Enforcement; procedure; remedies.—The department
450 shall have the following judicial and administrative remedies
451 available to it for violations of this chapter, as specified in
452 s. 403.161(1).

453 (2) Administrative remedies:

454 (b) If the department has reason to believe a violation has
455 occurred, it may institute an administrative proceeding to order
456 the prevention, abatement, or control of the conditions creating
457 the violation or other appropriate corrective action. Except for
458 violations involving hazardous wastes, asbestos, major sources
459 of air pollution, or underground injection, the department shall
460 proceed administratively in all cases in which the department
461 seeks administrative penalties that do not exceed \$10,000 per
462 assessment as calculated in accordance with subsections (3),
463 (4), (5), (6), ~~and~~ (7), and (9). Pursuant to 42 U.S.C. s. 300g-
464 2, the administrative penalty assessed pursuant to subsection

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465 (3), subsection (4), or subsection (5) against a public water
466 system serving a population of more than 10,000 may ~~shall be~~ not
467 be less than \$1,000 per day per violation. The department may
468 ~~shall~~ not impose administrative penalties greater than ~~in excess~~
469 ~~of~~ \$10,000 in a notice of violation. The department may ~~shall~~
470 not have more than one notice of violation seeking
471 administrative penalties pending against the same party at the
472 same time unless the violations occurred at a different site or
473 the violations were discovered by the department after
474 ~~subsequent to~~ the filing of a previous notice of violation.

475 (f) In any administrative proceeding brought by the
476 department, the prevailing party shall recover all costs as
477 provided in ss. 57.041 and 57.071. The costs must be included in
478 the final order. The respondent is the prevailing party when a
479 final ~~an~~ order is entered which does not require the respondent
480 to perform any corrective actions or award any damages or
481 ~~awarding no~~ penalties to the department and such order has not
482 been reversed on appeal or the time for seeking judicial review
483 has expired. The respondent is ~~shall be~~ entitled to an award of
484 attorney's fees if the administrative law judge determines that
485 the notice of violation issued by the department seeking the
486 imposition of administrative penalties was not substantially
487 justified as defined in s. 57.111(3) ~~s. 57.111(3)(e)~~. An ~~No~~
488 award of attorney's fees as provided by this subsection may not
489 ~~shall~~ exceed \$15,000.

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

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494 (a) For ~~a~~ drinking water contamination violations~~s~~, the
495 department shall assess:

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

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

506 3. A penalty of \$3,000 for failure to obtain a clearance
507 letter before ~~prior to~~ placing a drinking water system into
508 service if ~~when~~ the system would not have been eligible for
509 clearance, ~~the department shall assess a penalty of \$3,000. All~~
510 other failures to obtain a clearance letter before placing a
511 drinking water system into service shall result in a penalty of
512 \$1,500.

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

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

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

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523 facility.

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

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

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

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

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

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

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

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

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

551 1. A penalty of \$1,000 for unpermitted or unauthorized

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552 dredging, ~~or~~ filling, or unauthorized construction of a
553 stormwater management system against the person or persons
554 responsible; ~~for the illegal dredging or filling, or~~
555 ~~unauthorized construction of a stormwater management system~~ plus
556 \$2,000 if the dredging or filling occurs in an aquatic preserve,
557 Outstanding Florida Water, ~~conservation easement~~, or Class I or
558 Class II surface water; ~~7~~ plus \$1,000 if the area dredged or
559 filled is greater than one-quarter acre but less than or equal
560 to one-half acre; ~~7~~ and plus \$1,000 if the area dredged or filled
561 is greater than one-half acre but less than or equal to one
562 acre; and plus \$3,000 if the person or persons responsible
563 previously applied for or obtained authorization from the
564 department to dredge or fill within wetlands or surface waters.

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

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

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

579 5. For stormwater management systems serving less than 5
580 acres, ~~the department shall assess~~ a penalty of \$2,000 for the

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581 failure to properly or timely construct a stormwater management
582 system.

583 6. In addition to the penalties authorized in this
584 subsection, ~~the department shall assess~~ a penalty of \$5,000 per
585 violation against the contractor or agent of the owner or tenant
586 that conducts unpermitted or unauthorized dredging or filling.
587 For purposes of this paragraph, the preparation or signing of a
588 permit application by a person currently licensed under chapter
589 471 to practice as a professional engineer does ~~shall~~ not make
590 that person an agent of the owner or tenant.

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

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

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

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

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

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610 assess:

611 1. A penalty of \$2,000 for the unpermitted or unauthorized
612 disposal or storage of solid waste; plus \$1,000 if the solid
613 waste is Class I or Class III ~~(excluding yard trash)~~ or if the
614 ~~solid waste~~ is construction and demolition debris in excess of
615 20 cubic yards;~~;~~ plus \$1,000 if the solid waste is disposed of
616 or stored in any natural or artificial body of water or within
617 500 feet of a potable water well; and plus \$1,000 if the solid
618 waste contains PCB at a concentration of 50 parts per million or
619 greater; untreated biomedical waste; more than 1 cubic meter of
620 regulated friable asbestos material that ~~greater than 1 cubic~~
621 ~~meter which~~ is not wetted, bagged, and covered; more than 25
622 gallons of used oil ~~greater than 25 gallons~~; or 10 or more lead
623 acid batteries.

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

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

638 4. A penalty of \$2,000 for failure to construct or maintain

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639 a required stormwater management system; failure to compact and
640 slope waste as required by department rule; or failure to
641 maintain a small working face as required by 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 violations violation, the
645 department shall assess a penalty of \$1,000 for an unpermitted
646 or unauthorized air emission or an air-emission-permit
647 exceedance; ~~plus \$1,000 if the emission results in an air~~
648 ~~quality violation,~~ plus \$3,000 if the emission was from a major
649 source and the source was major for the pollutant in violation;
650 and plus \$1,000 if the emission was more than 150 percent of the
651 allowable level.

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

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

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

666 3. A penalty of \$2,000 for failure to conduct or maintain
667 required release detection; failure to timely investigate a

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668 suspected release from a storage system; depositing motor fuel
669 into an unregistered storage tank system; ~~failure to timely~~
670 ~~assess or remediate petroleum contamination;~~ or failure to
671 properly install a storage tank system. ~~The department shall~~
672 ~~assess~~

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

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

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

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

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

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

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

696 (b) For failure to properly install, operate, maintain, or

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697 use a required pollution control, collection, treatment, or
698 disposal system or device, or failure to use appropriate best-
699 management practices or erosion and sediment controls, \$4,000.

700 (c) For failure to obtain a required permit or license
701 before construction or modification, \$3,000 if the facility is
702 constructed, modified, or operated in compliance with applicable
703 requirements; or \$5,000 if the facility is constructed,
704 modified, or operated out of compliance with applicable
705 requirements.

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

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

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

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

724 (9) The administrative penalties assessed for any
725 particular violation may ~~shall~~ not exceed \$5,000 against any one

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726 violator, unless the violator has a history of noncompliance,
727 the violator received economic benefit from ~~of~~ the violation ~~as~~
728 ~~described in subsection (8) exceeds \$5,000~~, or there are
729 multiday violations. The total administrative penalties may
730 ~~shall~~ not exceed \$10,000 per assessment for all violations
731 attributable to a specific person in the notice of violation.

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

734 712.03 Exceptions to marketability.—Such marketable record
735 title shall not affect or extinguish the following 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 to
744 read:

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

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755 state or, ~~whether such person~~ is natural or corporate, ~~or is~~
756 ~~private or governmental~~, are hereby declared to be null and
757 void, ~~except that this chapter shall not be deemed to affect any~~
758 ~~right, title, or interest of the United States, Florida, or any~~
759 ~~of its officers, boards, commissions, or other agencies reserved~~
760 ~~in the patent or deed by which the United States, Florida, or~~
761 ~~any of its agencies parted with title.~~

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