

By the Committees on Community Affairs; and Environmental Preservation and Conservation; and Senator Constantine

578-04363-09

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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           state 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 an  
15          affirmative vote of six members of the council for  
16          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  
19          the Land Management Uniform Accounting Council;  
20          amending s. 259.105, F.S.; providing that the certain  
21          proceeds from the Florida Forever Trust Fund shall be  
22          spent on certain capital projects within a year after  
23          acquisition rather than only at the time of  
24          acquisition; requiring an affirmative vote of six  
25          members of the Acquisition and Restoration Council for  
26          certain decisions; amending s. 253.12, F.S.;  
27          clarifying that title to certain sovereignty lands  
28          which were judicially adjudicated are excluded from  
29          automatically becoming private property; amending s.

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30 373.427, F.S.; increasing the amount of time for  
31 filing a petition for an administrative hearing on an  
32 application to use board of trustees-owned submerged  
33 lands; amending s. 403.0876, F.S.; providing that the  
34 Department of Environmental Protection's failure to  
35 approve or deny certain air construction permits  
36 within 90 days does not automatically result in  
37 approval or denial; amending s. 403.121, F.S.;  
38 excluding certain air pollution violations from  
39 certain departmental actions; clarifying when a  
40 respondent in an administrative action is the  
41 prevailing party; revising the penalties that may be  
42 assessed for violations involving drinking water  
43 contamination, wastewater, dredge, fill, or  
44 stormwater, mangrove trimming or alterations, solid  
45 waste, air emission, and waste cleanup; increasing  
46 fines relating to public water system requirements;  
47 revising provisions relating to a limit on the amount  
48 of a fine for a particular violation by certain  
49 violators; amending ss. 712.03 and 712.04, F.S.;  
50 providing an exception from an entitlement to  
51 marketable record title to interests held by  
52 governmental entities; providing an effective date.

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

55  
56 Section 1. Paragraphs (a) and (c) of subsection (5) of  
57 section 253.034, Florida Statutes, are amended to read:  
58 253.034 State-owned lands; uses.-

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

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

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

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

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- 117 1. A physical description of the land.
- 118 2. A quantitative data description of the land which  
119 includes an inventory of forest and other natural resources;  
120 exotic and invasive plants; hydrological features;  
121 infrastructure, including recreational facilities; and other  
122 significant land, cultural, or historical features. The  
123 inventory must ~~shall~~ reflect the number of acres for each  
124 resource and feature, as ~~when~~ appropriate. The inventory shall  
125 be of such detail that objective measures and benchmarks can be  
126 established for each tract of land and monitored during the  
127 lifetime of the plan. All quantitative data collected must ~~shall~~  
128 be aggregated, standardized, collected, and presented in an  
129 electronic format to allow for uniform management reporting and  
130 analysis. The information collected by the Department of  
131 Environmental Protection pursuant to s. 253.0325(2) shall be  
132 available to the land manager and his or her assignee.
- 133 3. A detailed description of each short-term and long-term  
134 land management goal, the associated measurable objectives, and  
135 the related activities that are to be performed to meet the land  
136 management objectives. Each land management objective must be  
137 addressed by the land management plan, and where practicable,  
138 may not ~~no land management objective shall~~ be performed to the  
139 detriment of ~~the~~ other land management objectives.
- 140 4. A schedule of land management activities which contains  
141 short-term and long-term land management goals and ~~the~~ related  
142 measurable objective and activities. The schedule must ~~shall~~  
143 include ~~for each activity~~ a timeline for completing each  
144 activity completion, quantitative measures, and detailed expense  
145 and manpower budgets. The schedule must ~~shall~~ provide a

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146 management tool that facilitates the development of performance  
147 measures.

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

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

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

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

171 Section 3. Subsections (1), (2), and (5) of section  
172 259.035, Florida Statutes, are amended to read:

173 259.035 Acquisition and Restoration Council.—

174 (1) There is created the Acquisition and Restoration

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175 Council-

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

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

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

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

203 (d) ~~(b)~~ The five remaining members ~~appointees~~ shall be

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

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

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

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

220 (g)~~(f)~~ The Department of Environmental Protection shall  
221 provide primary staff support to the council and shall ensure  
222 that council meetings are electronically recorded. Such  
223 recording must ~~shall~~ be preserved pursuant to chapters 119 and  
224 257.

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

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



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233 ~~performance of their duties,~~ pursuant to s. 112.061.

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

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

243 259.037 Land Management Uniform Accounting Council.—

244 (3)

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

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

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

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

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

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

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

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

289           259.105 The Florida Forever Act.—

290           (3) Less the costs of issuing and the costs of funding

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

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

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

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

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

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

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349 acquisition, or in the management plan prepared pursuant to s.  
350 259.032(10). Such capital projects must ~~which~~ meet land  
351 management planning activities necessary for public access.

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

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

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

374 253.12 Title to tidal lands vested in state.—

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

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

388 Section 7. Paragraph (c) of subsection (2) of section  
389 373.427, Florida Statutes, is amended to read:

390 373.427 Concurrent permit review.—

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

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

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

428 Section 8. Paragraph (c) of subsection (2) of section  
 429 403.0876, Florida Statutes, is amended to read:

430 403.0876 Permits; processing.—

431 (2)

432 (c) The failure of the department to approve or deny an  
 433 application for an air construction permit for which a federally  
 434 delegated or approved program requires a public participation  
 435 period of 30 days or longer, or for an operation permit for a

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

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

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

454 (2) Administrative remedies:

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



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465 2, the administrative penalty assessed pursuant to subsection  
466 (3), subsection (4), or subsection (5) against a public water  
467 system serving a population of more than 10,000 may ~~shall be~~ not  
468 be less than \$1,000 per day per violation. The department may  
469 ~~shall~~ not impose administrative penalties greater than ~~in excess~~  
470 ~~of~~ \$10,000 in a notice of violation. The department may ~~shall~~  
471 not have more than one notice of violation seeking  
472 administrative penalties pending against the same party at the  
473 same time unless the violations occurred at a different site or  
474 the violations were discovered by the department after  
475 ~~subsequent to~~ the filing of a previous notice of violation.

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

491 (3) Except for violations involving hazardous wastes,  
492 asbestos, major sources of air pollution, or underground  
493 injection, administrative penalties must be in accordance with

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494 ~~calculated according to~~ the following schedule:

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

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

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

511 3. A penalty of \$2,000 for failure to properly complete a  
512 required public notice of violations, exceedances, or failures  
513 that may pose an acute risk to human health, plus \$2,000 if the  
514 violation occurs at a community water system. All other failures  
515 to properly complete a required public notice relating to  
516 maximum contaminant level violations shall result in a penalty  
517 of \$1,000, plus \$1,000 if the violation occurs at a community  
518 water system.

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

521 5. A penalty of \$1,000 for failure to provide or meet  
522 licensed operator or staffing requirements at a drinking water

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523 facility, plus \$1,000 if the violation occurs at a community  
524 water system.

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

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

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

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

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

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

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

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

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

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

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

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

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

580       5. For stormwater management systems serving less than 5

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581 acres, ~~the department shall assess~~ a penalty of \$2,000 for the  
582 failure to properly or timely construct a stormwater management  
583 system.

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

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

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

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

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

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610 (e) For solid waste violations, the department shall  
611 assess:

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

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

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

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

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

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

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

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

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

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

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

677       (h) For waste cleanup violations, the department shall  
678 assess:

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

686       2. A penalty of \$3,000 for failure to timely assess or  
687 remediate contamination as required by department rule.

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

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

695       (b) For failure to properly install, operate, maintain, or  
696 use a required pollution control, collection, treatment, or



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697 disposal system or device, or failure to use appropriate best-  
698 management practices or erosion and sediment controls, \$4,000.

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

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

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

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

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

723 (9) The administrative penalties assessed for any  
724 particular violation may ~~shall~~ not exceed \$5,000 against any one  
725 violator, unless the violator has a history of noncompliance,

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

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

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

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

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

744 712.04 Interests extinguished by marketable record title.—  
745 Subject to the matters stated in s. 712.03, a ~~such~~ marketable  
746 record title is ~~shall be~~ free and clear of all estates,  
747 interests, claims, or charges whatsoever, the existence of which  
748 depends upon any act, title transaction, event or omission that  
749 occurred before ~~prior to~~ the effective date of the root of  
750 title. All such estates, interests, claims, or charges, however  
751 denominated, whether such estates, interests, claims, or charges  
752 are or appear to be held or asserted by a person sui juris or  
753 under a disability, whether such person is within or without the  
754 state or, ~~whether such person~~ is natural or corporate, ~~or is~~

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

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