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1                   A bill to be entitled  
 2           An act relating to liability for pollution; amending s.  
 3           376.031, F.S.; revising the definition of the term  
 4           "damage" under the Pollutant Discharge Prevention and  
 5           Control Act to provide for liability for economic damages  
 6           and for tax revenue lost as a result of a prohibited  
 7           discharge; amending s. 376.12, F.S.; deleting provisions  
 8           relating to limitations on liability for cleanup costs and  
 9           exceptions thereto; conforming a provision to changes made  
 10          to the Administrative Procedures Act; conforming cross-  
 11          references; amending s. 376.09, F.S.; conforming  
 12          provisions to changes made by the act; amending s.  
 13          376.205, F.S.; conforming a cross-reference; providing an  
 14          effective date.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Subsection (5) of section 376.031, Florida  
 19   Statutes, is amended to read:

20           376.031 Definitions; ss. 376.011-376.21.—When used in ss.  
 21   376.011-376.21, unless the context clearly requires otherwise,  
 22   the term:

23           (5) "Damage" means the documented extent of any of the  
 24   following as a direct result of the discharge of a pollutant:

25           (a) Destruction to or loss of any real or personal  
 26   property, ~~or~~

27           (b) The documented extent, pursuant to s. 376.121, of any  
 28   destruction of the environment and natural resources, including

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29 | all living things except human beings, as the direct result of  
 30 | the discharge of a pollutant.

31 | (c) All economic damages, including, without limitation,  
 32 | loss of income and, without limitation, with respect to the  
 33 | state and all political subdivisions thereof, loss of tax  
 34 | revenues.

35 | Section 2. Section 376.12, Florida Statutes, is amended to  
 36 | read:

37 | 376.12 Liabilities and defenses of responsible parties;  
 38 | liabilities of third parties; financial security requirements  
 39 | for vessels; liability of cargo owners; notification  
 40 | requirements.—

41 | (1) LIABILITY FOR CLEANUP COSTS.—Because it is the intent  
 42 | of ss. 376.011–376.21 to provide the means for rapid and  
 43 | effective cleanup and to minimize cleanup costs and damages, any  
 44 | responsible party who permits or suffers a prohibited discharge  
 45 | or other polluting condition to take place within state  
 46 | boundaries shall be liable to the fund for all costs of removal,  
 47 | containment, and abatement of a prohibited discharge, ~~unless the~~  
 48 | ~~responsible party is entitled to a limitation or defense under~~  
 49 | ~~this section.~~

50 | ~~(2) LIMITATION OF LIABILITY FOR CLEANUP COSTS.—Except as~~  
 51 | ~~provided in subsection (3), a responsible party's liability to~~  
 52 | ~~the fund for costs of removal, containment, and abatement shall~~  
 53 | ~~be as follows:~~

54 | ~~(a) For a vessel transporting pollutants as cargo:~~

55 | ~~1. For any such vessel of 3,000 gross tons or more, \$10~~  
 56 | ~~million or \$1,200 per gross ton, whichever is greater.~~

57 ~~2. For any such vessel of less than 3,000 gross tons, \$2~~  
 58 ~~million or \$1,200 per gross ton, whichever is greater.~~

59 ~~(b) For any other vessel: \$500,000 or \$600 per gross ton,~~  
 60 ~~whichever is greater.~~

61 ~~(c) For a terminal facility: \$150 million.~~

62 ~~(3) EXCEPTIONS TO LIMITATION OF LIABILITY. The provisions~~  
 63 ~~of subsection (2) shall not apply when:~~

64 ~~(a) The department demonstrates that such discharge was~~  
 65 ~~the result of willful or gross negligence or willful misconduct~~  
 66 ~~of, or the violation of an applicable federal or state safety,~~  
 67 ~~construction, or operating regulation or rule by, the~~  
 68 ~~responsible party, an agent or employee of the responsible~~  
 69 ~~party, or a person acting pursuant to a contractual relationship~~  
 70 ~~with the responsible party, except where the sole contractual~~  
 71 ~~arrangement arises in connection with carriage by a common~~  
 72 ~~carrier by rail; or~~

73 ~~(b) The responsible party fails or refuses:~~

74 ~~1. To report the incident as required by law and the~~  
 75 ~~responsible party knows or has reason to know of the incident;~~  
 76 ~~or~~

77 ~~2. To provide reasonable cooperation and assistance~~  
 78 ~~requested by a state or federal on-scene coordinator in~~  
 79 ~~connection with cleanup activities. The responsible party must~~  
 80 ~~file an objection with the department if such party deems that~~  
 81 ~~cooperation or assistance requested by a state or federal on-~~  
 82 ~~scene coordinator is unreasonable. Such an objection must be~~  
 83 ~~filed with the department within 2 working days after the~~  
 84 ~~request. If such request is determined by the department to be~~

85 ~~unreasonable, the responsible party may assert a claim against~~  
 86 ~~the fund, pursuant to s. 376.123, for reimbursement of expenses~~  
 87 ~~incurred in carrying out such request. The responsible party may~~  
 88 ~~not file an objection to a request based solely on the premise~~  
 89 ~~that the requested activity did not have satisfactory results,~~  
 90 ~~that the responsible party has exceeded the applicable~~  
 91 ~~limitation of liability, or that the responsible party has a~~  
 92 ~~defense to liability.~~

93 (2)~~(4)~~ LIABILITY FOR NATURAL RESOURCE DAMAGES.—Each  
 94 responsible party is liable to the fund, pursuant to s. 376.121,  
 95 for all natural resource damages that result from the discharge.

96 (3)~~(5)~~ LIABILITY FOR ECONOMIC AND PROPERTY DAMAGES.—Each  
 97 responsible party is liable to any affected person for all  
 98 damages as defined in s. 376.031, excluding natural resource  
 99 damages, suffered by that person as a result of the discharge.

100 (4)~~(6)~~ ADMINISTRATIVE REMEDIES OF RESPONSIBLE PARTIES.—A  
 101 responsible party that disputes any claim by the department may  
 102 request a hearing pursuant to ss. 120.569 and ~~s.~~ 120.57.

103 (5)~~(7)~~ DEFENSES TO LIABILITY.—In any proceeding  
 104 determining claims of the fund or any other claims by the state  
 105 pursuant to ss. 376.011-376.21, it shall not be necessary for  
 106 the department to plead or prove negligence in any form or  
 107 manner. The department need only plead and prove that the  
 108 prohibited discharge or other polluting condition occurred. The  
 109 only defenses of a person alleged to be responsible for the  
 110 discharge to an action or proceeding for damages or cleanup  
 111 costs shall be to plead and prove that the occurrence was solely  
 112 the result of any of the following or any combination of the

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113 following:

114 (a) An act of war.

115 (b) An act of government, either federal, state, county,  
116 or municipal.

117 (c) An act of God, which means only an unforeseeable act  
118 exclusively occasioned by the violence of nature without the  
119 interference of any human agency.

120 (d) An act or omission of a third party other than an  
121 employee or agent of the responsible party or a third party  
122 whose act or omission occurs in connection with any contractual  
123 relationship with the responsible party, except where the sole  
124 contractual arrangement arises in connection with carriage by  
125 rail,

126  
127 provided that, to establish entitlement to any of the foregoing  
128 defenses, the responsible party shall plead and prove that the  
129 responsible party exercised due care with respect to the  
130 pollutant concerned, taking into consideration the  
131 characteristics of the pollutant and in light of all relevant  
132 facts and circumstances, and took precautions against  
133 foreseeable acts or omissions of others and the foreseeable  
134 consequences of those acts or omissions.

135 (6)~~(8)~~ EXCEPTIONS TO DEFENSES.—The defenses provided in  
136 subsection (5) ~~(7)~~ shall not apply with respect to a responsible  
137 party who fails or refuses:

138 (a) To report the discharge as required by law, when the  
139 responsible party knows or has reason to know of the discharge;  
140 or

141 (b) To provide reasonable cooperation and assistance  
 142 requested by a state or federal on-scene coordinator in  
 143 connection with cleanup activities. ~~The responsible party must~~  
 144 ~~file an objection with the department, pursuant to subsection~~  
 145 ~~(3), if such party deems that cooperation or assistance~~  
 146 ~~requested by a state or federal on-scene coordinator is~~  
 147 ~~unreasonable.~~

148 (7) ~~(9)~~ LIABILITY OF THIRD PARTIES.—In any case in which a  
 149 responsible party establishes that a discharge or threat of a  
 150 discharge and the resulting cleanup costs and damages were  
 151 caused solely by an act or omission of one or more third parties  
 152 as described in paragraph (5) ~~(7)~~ (d), or solely by such an act or  
 153 omission in combination with an act of war, an act of  
 154 government, or an act of God, the third party or parties shall  
 155 be treated as the responsible party or parties for all purposes  
 156 of determining liability under ss. 376.011-376.21.

157 (8) ~~(10)~~ LIABILITY OF CARGO OWNERS.—The owner of a  
 158 pollutant transported as cargo on any vessel suffering a  
 159 discharge within state waters is liable for all cleanup costs  
 160 within the applicable vessel liability limits established under  
 161 this section, not paid for by the owner or operator of the  
 162 vessel. However, the cargo owner is not liable under this  
 163 subsection if the vessel owner, operator, or master is found in  
 164 compliance with the financial security requirements of this  
 165 section at the time of the discharge or fails to provide  
 166 certified notification of the cancellation or withdrawal of  
 167 financial security to the department and the cargo owner at  
 168 least 3 working days before the vessel entered state waters.

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169        (9) ~~(11)~~ NOTIFICATION REQUIREMENTS FOR VESSELS AND TERMINAL  
 170 FACILITIES.—In addition to any civil penalties which may apply,  
 171 any person responsible who fails to give immediate notification  
 172 of a discharge to the department or the nearest Coast Guard  
 173 Marine Safety Office or National Response Center commits a  
 174 felony of the third degree, punishable as provided in s.  
 175 775.082, s. 775.083, or s. 775.084. However, a discharge of 5  
 176 gallons or less of gasoline or diesel from a vessel shall not  
 177 give rise to felony penalties for failure to comply with the  
 178 state notification requirements in this subsection. After  
 179 reporting a discharge, a vessel shall remain in the jurisdiction  
 180 of the department until such time as the department is able to  
 181 prove financial responsibility for the damages resulting from  
 182 the discharge. The master of a vessel that fails to remain in  
 183 the jurisdiction of the department for a reasonable time after  
 184 notice of a discharge commits a felony of the third degree,  
 185 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 186 The department shall not detain the vessel longer than 12 hours  
 187 after receiving proof of financial responsibility. The  
 188 department shall, by rule, require that the terminal facility  
 189 designate a person at the terminal facility as the person in  
 190 charge of that facility for the purposes specified by this  
 191 section.

192        Section 3. Paragraph (b) of subsection (7) of section  
 193 376.09, Florida Statutes, is amended to read:

194        376.09 Removal of prohibited discharges.—

195        (7)

196        (b) A responsible party may assert a claim against the

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197 fund only if it ~~under the following circumstances:~~

198 ~~1. A responsible party who~~ complies with the requests of  
 199 the state and federal on-scene coordinators and later pleads and  
 200 proves a valid defense under s. 376.12 may assert a claim  
 201 against the fund, pursuant to s. 376.123, for reimbursement of  
 202 the reasonable costs expended for containment, abatement, or  
 203 removal.

204 ~~2. A responsible party who~~ complies with the requests of  
 205 the state and federal on-scene coordinators and later pleads and  
 206 proves a valid limitation of liability under s. 376.12 may  
 207 assert a claim against the fund, pursuant to s. 376.123, for  
 208 reimbursement of the reasonable costs expended in excess of the  
 209 applicable limitation of liability.

210 ~~3. If the department has determined, pursuant to s.~~  
 211 ~~376.12(3)(b)2., that a particular request by a state or federal~~  
 212 ~~on-scene coordinator for the responsible party's cooperation or~~  
 213 ~~assistance was unreasonable, the responsible party may assert a~~  
 214 ~~claim against the fund, pursuant to s. 376.123, for~~  
 215 ~~reimbursement of the costs expended in complying with the~~  
 216 ~~particular request.~~

217 Section 4. Section 376.205, Florida Statutes, is amended  
 218 to read:

219 376.205 Individual cause of action for damages under ss.  
 220 376.011-376.21.—The remedies in this act shall be deemed to be  
 221 cumulative and not exclusive. Nothing in this act shall require  
 222 pursuit of any claim against the fund as a condition precedent  
 223 to any remedy against a responsible party. Notwithstanding any  
 224 other provision of law, any person may bring a cause of action



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225 | against a responsible party in a court of competent jurisdiction  
226 | for damages, as defined in s. 376.031, resulting from a  
227 | discharge or other condition of pollution covered by ss.  
228 | 376.011-376.21. In any such suit, it shall not be necessary for  
229 | the person to plead or prove negligence in any form or manner.  
230 | Such person need only plead and prove the fact of the prohibited  
231 | discharge or other pollutive condition and that it occurred. The  
232 | only defenses to such cause of action shall be those specified  
233 | in s. 376.12(5)~~(7)~~. The court, in issuing any final judgment in  
234 | such action, may award costs of litigation, including reasonable  
235 | attorney's and expert witness fees, to any party, whenever the  
236 | court determines such an award is in the public interest.

237 |       Section 5. This act shall take effect upon becoming a law.