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LEGISLATIVE ACTION

Senate

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House

Appropriations Subcommittee on Criminal and Civil Justice
(Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 161.054, Florida
Statutes, is amended to read:

161.054 Administrative fines; liability for damage; liens.—

(1) In addition to the penalties provided for in ss.
161.052, 161.053, and 161.121, any person, firm, corporation, or
governmental agency, or agent thereof, refusing to comply with



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11 or willfully violating ~~any of the provisions of~~ s. 161.041, s.
12 161.052, or s. 161.053, or any rule or order prescribed by the
13 department thereunder, shall incur a fine for each offense in an
14 amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected
15 by the department. Each day during any portion of which such
16 violation occurs constitutes a separate offense.

17 Section 2. Subsection (7) of section 258.397, Florida
18 Statutes, is amended to read:

19 258.397 Biscayne Bay Aquatic Preserve.—

20 (7) ENFORCEMENT. ~~The provisions of~~ This section may be
21 enforced in accordance with ~~the provisions of~~ s. 403.412. In
22 addition, the Department of Legal Affairs may ~~is authorized to~~
23 bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day
24 against any person, natural or corporate, who violates ~~the~~
25 ~~provisions of~~ this section or any rule or regulation issued
26 hereunder. Each day during any portion of which such violation
27 occurs constitutes a separate offense. Enforcement of applicable
28 state regulations shall be supplemented by the Miami-Dade County
29 Department of Environmental Resources Management through the
30 creation of a full-time enforcement presence along the Miami
31 River.

32 Section 3. Section 258.46, Florida Statutes, is amended to
33 read:

34 258.46 Enforcement; violations; penalty. ~~The provisions of~~
35 This act may be enforced by the Board of Trustees of the
36 Internal Improvement Trust Fund or in accordance with ~~the~~
37 ~~provisions of~~ s. 403.412. However, any violation by any person,
38 natural or corporate, of ~~the provisions of~~ this act or any rule
39 or regulation issued hereunder is ~~shall be~~ further punishable by



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40 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
41 \$7,500 ~~\$5,000~~ per day of such violation. Each day during any
42 portion of which such violation occurs constitutes a separate
43 offense.

44 Section 4. Subsections (5) and (7) of section 373.129,
45 Florida Statutes, are amended to read:

46 373.129 Maintenance of actions.—The department, the
47 governing board of any water management district, any local
48 board, or a local government to which authority has been
49 delegated pursuant to s. 373.103(8), is authorized to commence
50 and maintain proper and necessary actions and proceedings in any
51 court of competent jurisdiction for any of the following
52 purposes:

53 (5) To recover a civil penalty for each offense in an
54 amount not to exceed \$15,000 ~~\$10,000~~ per offense. Each date
55 during which such violation occurs constitutes a separate
56 offense.

57 (a) A civil penalty recovered by a water management
58 district pursuant to this subsection shall be retained and used
59 exclusively by the water management district that collected the
60 money. A civil penalty recovered by the department pursuant to
61 this subsection must be deposited into the Water Quality
62 Assurance Trust Fund established under s. 376.307.

63 (b) A local government that is delegated authority pursuant
64 to s. 373.103(8) may deposit a civil penalty recovered pursuant
65 to this subsection into a local water pollution control program
66 trust fund, notwithstanding ~~the provisions of~~ paragraph (a).
67 However, civil penalties that are deposited in a local water
68 pollution control program trust fund and that are recovered for



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69 violations of state water quality standards may be used only to
70 restore water quality in the area that was the subject of the
71 action, and civil penalties that are deposited in a local water
72 pollution control program trust fund and that are recovered for
73 violation of requirements relating to water quantity may be used
74 only to purchase lands and make capital improvements associated
75 with surface water management, or other purposes consistent with
76 the requirements of this chapter for the management and storage
77 of surface water.

78 (7) To enforce ~~the provisions of~~ part IV of this chapter in
79 the same manner and to the same extent as provided in ss.
80 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

81 Section 5. Subsection (3) of section 373.209, Florida
82 Statutes, is amended to read:

83 373.209 Artesian wells; penalties for violation.—

84 (3) Any person who violates ~~any provision of~~ this section
85 is shall be subject to either:

86 (a) The remedial measures provided for in s. 373.436; or

87 (b) A civil penalty of \$150 ~~\$100~~ a day for each and every
88 day of such violation and for each and every act of violation.

89 The civil penalty may be recovered by the water management board
90 of the water management district in which the well is located or
91 by the department in a suit in a court of competent jurisdiction
92 in the county where the defendant resides, in the county of
93 residence of any defendant if there is more than one defendant,
94 or in the county where the violation took place. The place of
95 suit shall be selected by the board or department, and the suit,
96 by direction of the board or department, shall be instituted and
97 conducted in the name of the board or department by appropriate



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98 counsel. The payment of any such damages does not impair or
99 abridge any cause of action which any person may have against
100 the person violating ~~any provision of~~ this section.

101 Section 6. Subsections (2) through (5) of section 373.430,
102 Florida Statutes, are amended to read:

103 373.430 Prohibitions, violation, penalty, intent.—

104 (2) A person who ~~Whoever~~ commits a violation specified in
105 subsection (1) is liable for any damage caused and for civil
106 penalties as provided in s. 373.129.

107 (3) A ~~Any~~ person who willfully commits a violation
108 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
109 the third degree, punishable as provided in ss. 775.082(3)(e)
110 and 775.083(1)(g), by a fine of not more than \$50,000 or by
111 imprisonment for 5 years, or by both, for each offense. Each day
112 during any portion of which such violation occurs constitutes a
113 separate offense.

114 (4) A ~~Any~~ person who commits a violation specified in
115 paragraph (1)(a) or paragraph (1)(b) due to reckless
116 indifference or gross careless disregard commits ~~is guilty of~~ a
117 misdemeanor of the second degree, punishable as provided in ss.
118 775.082(4)(b) and 775.083(1)(g), by a fine of not more than
119 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

120 (5) A ~~Any~~ person who willfully commits a violation
121 specified in paragraph (1)(b) or who commits a violation
122 specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor
123 of the first degree, punishable as provided in ss. 775.082(4)(a)
124 and 775.083(1)(g), by a fine of not more than \$10,000 or by 6
125 months in jail, or by both, for each offense.

126 Section 7. Paragraphs (a) and (e) of subsection (5) of



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127 section 376.065, Florida Statutes, are amended to read:

128 376.065 Operation of terminal facility without discharge
129 prevention and response certificate prohibited; penalty.—

130 (5) (a) A person who violates this section or the terms and
131 requirements of such certification commits a noncriminal
132 infraction. The civil penalty for any such infraction shall be
133 \$750 ~~\$500~~, except as otherwise provided in this section.

134 (e) A person who elects to appear before the county court
135 or who is required to so appear waives the limitations of the
136 civil penalty specified in paragraph (a). The court, after a
137 hearing, shall make a determination as to whether an infraction
138 has been committed. If the commission of the infraction is
139 proved, the court shall impose a civil penalty of \$750 ~~\$500~~.

140 Section 8. Paragraphs (a) and (e) of subsection (2) of
141 section 376.071, Florida Statutes, are amended to read:

142 376.071 Discharge contingency plan for vessels.—

143 (2) (a) A master of a vessel that violates subsection (1)
144 commits a noncriminal infraction and shall be cited for such
145 infraction. The civil penalty for such an infraction shall be
146 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

147 (e) A person who elects to appear before the county court
148 or who is required to appear waives the limitations of the civil
149 penalty specified in paragraph (a). The court, after a hearing,
150 shall make a determination as to whether an infraction has been
151 committed. If the commission of the infraction is proved, the
152 court shall impose a civil penalty of \$7,500 ~~\$5,000~~.

153 Section 9. Section 376.16, Florida Statutes, is amended to
154 read:

155 376.16 Enforcement and penalties.—



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156 (1) It is unlawful for any person to violate ~~any provision~~
157 ~~of~~ ss. 376.011-376.21 or any rule or order of the department
158 made pursuant to this act. A violation is ~~shall be~~ punishable by
159 a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day
160 to be assessed by the department. Each day during any portion of
161 which the violation occurs constitutes a separate offense. The
162 penalty provisions of this subsection do ~~shall~~ not apply to any
163 discharge promptly reported and removed by a person responsible,
164 in accordance with the rules and orders of the department, or to
165 any discharge of pollutants equal to or less than 5 gallons.

166 (2) In addition to the penalty provisions which may apply
167 under subsection (1), a person responsible for two or more
168 discharges of any pollutant reported pursuant to s. 376.12
169 within a 12-month period at the same facility commits a
170 noncriminal infraction and shall be cited by the department for
171 such infraction.

172 (a) For discharges of gasoline or diesel over 5 gallons,
173 the civil penalty for the second discharge shall be \$750 ~~\$500~~
174 and the civil penalty for each subsequent discharge within a 12-
175 month period shall be \$1,500 ~~\$1,000~~, except as otherwise
176 provided in this section.

177 (b) For discharges of any pollutant other than gasoline or
178 diesel, the civil penalty for a second discharge shall be \$3,750
179 ~~\$2,500~~ and the civil penalty for each subsequent discharge
180 within a 12-month period shall be \$7,500 ~~\$5,000~~, except as
181 otherwise provided in this section.

182 (3) A person responsible for two or more discharges of any
183 pollutant reported pursuant to s. 376.12 within a 12-month
184 period at the same facility commits a noncriminal infraction and



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185 shall be cited by the department for such infraction.

186 (a) For discharges of gasoline or diesel equal to or less
187 than 5 gallons, the civil penalty shall be \$75 ~~\$50~~ for each
188 discharge subsequent to the first.

189 (b) For discharges of pollutants other than gasoline or
190 diesel equal to or less than 5 gallons, the civil penalty shall
191 be \$150 ~~\$100~~ for each discharge subsequent to the first.

192 (4) A person charged with a noncriminal infraction pursuant
193 to subsection (2) or subsection (3) may:

194 (a) Pay the civil penalty;

195 (b) Post a bond equal to the amount of the applicable civil
196 penalty; or

197 (c) Sign and accept a citation indicating a promise to
198 appear before the county court.

199

200 The department employee authorized to issue these citations may
201 indicate on the citation the time and location of the scheduled
202 hearing and shall indicate the applicable civil penalty.

203 (5) Any person who willfully refuses to post bond or accept
204 and sign a citation commits a misdemeanor of the second degree,
205 punishable as provided in s. 775.082 or s. 775.083.

206 (6) After compliance with paragraph (4)(b) or paragraph
207 (4)(c), any person charged with a noncriminal infraction under
208 subsection (2) or subsection (3) may:

209 (a) Pay the civil penalty, either by mail or in person,
210 within 30 days after the date of receiving the citation; or

211 (b) If the person has posted bond, forfeit the bond by not
212 appearing at the designated time and location.

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214 A person cited for an infraction under this section who pays the
215 civil penalty or forfeits the bond has admitted the infraction
216 and waives the right to a hearing on the issue of commission of
217 the infraction. Such admission may not be used as evidence in
218 any other proceeding.

219 (7) Any person who elects to appear before the county court
220 or who is required to appear waives the limitations of the civil
221 penalties specified in subsection (2). The court, after a
222 hearing, shall make a determination as to whether an infraction
223 has been committed. If the commission of an infraction is
224 proved, the court may impose a civil penalty up to, but not
225 exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or
226 diesel and a civil penalty up to, but not exceeding, \$1,500
227 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel
228 within a 12-month period.

229 (8) Any person who elects to appear before the county court
230 or who is required to appear waives the limitations of the civil
231 penalties specified in subsection (2) or subsection (3). The
232 court, after a hearing, shall make a determination as to whether
233 an infraction has been committed. If the commission of an
234 infraction is proved, the court may impose a civil penalty up
235 to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of
236 pollutants other than gasoline or diesel and a civil penalty up
237 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent
238 discharge of pollutants other than gasoline or diesel within a
239 12-month period.

240 (9) At a hearing under this section, the commission of a
241 charged offense must be proved by the greater weight of the
242 evidence.



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243 (10) A person who is found by a hearing official to have
244 committed an infraction may appeal that finding to the circuit
245 court.

246 (11) Any person who has not posted bond and who neither
247 pays the applicable civil penalty, as specified in subsection
248 (2) or subsection (3) within 30 days of receipt of the citation
249 nor appears before the court commits a misdemeanor of the second
250 degree, punishable as provided in s. 775.082 or s. 775.083.

251 (12) Any person who makes or causes to be made a false
252 statement that ~~which~~ the person does not believe to be true in
253 response to requirements of ~~the provisions of~~ ss. 376.011-376.21
254 commits a felony of the second degree, punishable as provided in
255 s. 775.082, s. 775.083, or s. 775.084.

256 Section 10. Paragraph (a) of subsection (6) of section
257 376.25, Florida Statutes, is amended to read:

258 376.25 Gambling vessels; registration; required and
259 prohibited releases.-

260 (6) PENALTIES.-

261 (a) A person who violates this section is subject to a
262 civil penalty of not more than \$75,000 ~~\$50,000~~ for each
263 violation. Each day during any portion of which such violation
264 occurs constitutes a separate offense.

265 Section 11. Paragraph (a) of subsection (1) of section
266 377.37, Florida Statutes, is amended to read:

267 377.37 Penalties.-

268 (1) (a) Any person who violates ~~any provision of~~ this law or
269 any rule, regulation, or order of the division made under this
270 chapter or who violates the terms of any permit to drill for or
271 produce oil, gas, or other petroleum products referred to in s.



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272 377.242(1) or to store gas in a natural gas storage facility, or
273 any lessee, permitholder, or operator of equipment or facilities
274 used in the exploration for, drilling for, or production of oil,
275 gas, or other petroleum products, or storage of gas in a natural
276 gas storage facility, who refuses inspection by the division as
277 provided in this chapter, is liable to the state for any damage
278 caused to the air, waters, or property, including animal, plant,
279 or aquatic life, of the state and for reasonable costs and
280 expenses of the state in tracing the source of the discharge, in
281 controlling and abating the source and the pollutants, and in
282 restoring the air, waters, and property, including animal,
283 plant, and aquatic life, of the state. Furthermore, such person,
284 lessee, permitholder, or operator is subject to the judicial
285 imposition of a civil penalty in an amount of not more than
286 \$15,000 ~~\$10,000~~ for each offense. However, the court may receive
287 evidence in mitigation. Each day during any portion of which
288 such violation occurs constitutes a separate offense. This
289 section does not ~~Nothing herein shall~~ give the department the
290 right to bring an action on behalf of any private person.

291 Section 12. Subsection (2) of section 378.211, Florida
292 Statutes, is amended to read:

293 378.211 Violations; damages; penalties.—

294 (2) The department may institute a civil action in a court
295 of competent jurisdiction to impose and recover a civil penalty
296 for violation of this part or of any rule adopted or order
297 issued pursuant to this part. The penalty may ~~shall~~ not exceed
298 the following amounts, and the court shall consider evidence in
299 mitigation:

300 (a) For violations of a minor or technical nature, \$150



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301 ~~\$100~~ per violation.

302 (b) For major violations by an operator on which a penalty
303 has not been imposed under this paragraph during the previous 5
304 years, \$1,500 ~~\$1,000~~ per violation.

305 (c) For major violations not covered by paragraph (b),
306 \$7,500 ~~\$5,000~~ per violation.

307
308 Subject to ~~the provisions of~~ subsection (4), each day or any
309 portion thereof in which the violation continues shall
310 constitute a separate violation.

311 Section 13. Subsection (2) of section 403.086, Florida
312 Statutes, is amended to read:

313 403.086 Sewage disposal facilities; advanced and secondary
314 waste treatment.—

315 (2) Any facilities for sanitary sewage disposal shall
316 provide for secondary waste treatment and, in addition thereto,
317 advanced waste treatment as deemed necessary and ordered by the
318 Department of Environmental Protection. Failure to conform shall
319 be punishable by a civil penalty of \$750 ~~\$500~~ for each 24-hour
320 day or fraction thereof that such failure is allowed to continue
321 thereafter.

322 Section 14. Section 403.121, Florida Statutes, is amended
323 to read:

324 403.121 Enforcement; procedure; remedies.—The department
325 shall have the following judicial and administrative remedies
326 available to it for violations of this chapter, as specified in
327 s. 403.161(1).

328 (1) Judicial remedies:

329 (a) The department may institute a civil action in a court



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330 of competent jurisdiction to establish liability and to recover
331 damages for any injury to the air, waters, or property,
332 including animal, plant, and aquatic life, of the state caused
333 by any violation.

334 (b) The department may institute a civil action in a court
335 of competent jurisdiction to impose and to recover a civil
336 penalty for each violation in an amount of not more than \$15,000
337 ~~\$10,000~~ per offense. However, the court may receive evidence in
338 mitigation. Each day during any portion of which such violation
339 occurs constitutes a separate offense.

340 (c) Except as provided in paragraph (2)(c), it is ~~shall~~ not
341 ~~be~~ a defense to, or ground for dismissal of, these judicial
342 remedies for damages and civil penalties that the department has
343 failed to exhaust its administrative remedies, has failed to
344 serve a notice of violation, or has failed to hold an
345 administrative hearing prior to the institution of a civil
346 action.

347 (2) Administrative remedies:

348 (a) The department may institute an administrative
349 proceeding to establish liability and to recover damages for any
350 injury to the air, waters, or property, including animal, plant,
351 or aquatic life, of the state caused by any violation. The
352 department may order that the violator pay a specified sum as
353 damages to the state. Judgment for the amount of damages
354 determined by the department may be entered in any court having
355 jurisdiction thereof and may be enforced as any other judgment.

356 (b) If the department has reason to believe a violation has
357 occurred, it may institute an administrative proceeding to order
358 the prevention, abatement, or control of the conditions creating



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359 the violation or other appropriate corrective action. Except for
360 violations involving hazardous wastes, asbestos, or underground
361 injection, the department shall proceed administratively in all
362 cases in which the department seeks administrative penalties
363 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated
364 in accordance with subsections (3), (4), (5), (6), and (7).
365 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty
366 assessed pursuant to subsection (3), subsection (4), or
367 subsection (5) against a public water system serving a
368 population of more than 10,000 shall be not less than \$1,000 per
369 day per violation. The department may ~~shall~~ not impose
370 administrative penalties in excess of \$50,000 ~~\$10,000~~ in a
371 notice of violation. The department may ~~shall~~ not have more than
372 one notice of violation seeking administrative penalties pending
373 against the same party at the same time unless the violations
374 occurred at a different site or the violations were discovered
375 by the department subsequent to the filing of a previous notice
376 of violation.

377 (c) An administrative proceeding shall be instituted by the
378 department's serving of a written notice of violation upon the
379 alleged violator by certified mail. If the department is unable
380 to effect service by certified mail, the notice of violation may
381 be hand delivered or personally served in accordance with
382 chapter 48. The notice shall specify the ~~provision of the law,~~
383 rule, regulation, permit, certification, or order of the
384 department alleged to be violated and the facts alleged to
385 constitute a violation thereof. An order for corrective action,
386 penalty assessment, or damages may be included with the notice.
387 When the department is seeking to impose an administrative



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388 penalty for any violation by issuing a notice of violation, any
389 corrective action needed to correct the violation or damages
390 caused by the violation must be pursued in the notice of
391 violation or they are waived. However, an ~~no~~ order is not ~~shall~~
392 ~~become~~ effective until after service and an administrative
393 hearing, if requested within 20 days after service. Failure to
394 request an administrative hearing within this time period
395 constitutes ~~shall constitute~~ a waiver thereof, unless the
396 respondent files a written notice with the department within
397 this time period opting out of the administrative process
398 initiated by the department to impose administrative penalties.
399 Any respondent choosing to opt out of the administrative process
400 initiated by the department in an action that seeks the
401 imposition of administrative penalties must file a written
402 notice with the department within 20 days after service of the
403 notice of violation opting out of the administrative process. A
404 respondent's decision to opt out of the administrative process
405 does not preclude the department from initiating a state court
406 action seeking injunctive relief, damages, and the judicial
407 imposition of civil penalties.

408 (d) If a person timely files a petition challenging a
409 notice of violation, that person will thereafter be referred to
410 as the respondent. The hearing requested by the respondent shall
411 be held within 180 days after the department has referred the
412 initial petition to the Division of Administrative Hearings
413 unless the parties agree to a later date. The department has the
414 burden of proving with the preponderance of the evidence that
415 the respondent is responsible for the violation. ~~No~~
416 Administrative penalties should not be imposed unless the



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417 department satisfies that burden. Following the close of the
418 hearing, the administrative law judge shall issue a final order
419 on all matters, including the imposition of an administrative
420 penalty. When the department seeks to enforce that portion of a
421 final order imposing administrative penalties pursuant to s.
422 120.69, the respondent may ~~shall~~ not assert as a defense the
423 inappropriateness of the administrative remedy. The department
424 retains its final-order authority in all administrative actions
425 that do not request the imposition of administrative penalties.

426 (e) After filing a petition requesting a formal hearing in
427 response to a notice of violation in which the department
428 imposes an administrative penalty, a respondent may request that
429 a private mediator be appointed to mediate the dispute by
430 contacting the Florida Conflict Resolution Consortium within 10
431 days after receipt of the initial order from the administrative
432 law judge. The Florida Conflict Resolution Consortium shall pay
433 all of the costs of the mediator and for up to 8 hours of the
434 mediator's time per case at \$150 per hour. Upon notice from the
435 respondent, the Florida Conflict Resolution Consortium shall
436 provide to the respondent a panel of possible mediators from the
437 area in which the hearing on the petition would be heard. The
438 respondent shall select the mediator and notify the Florida
439 Conflict Resolution Consortium of the selection within 15 days
440 of receipt of the proposed panel of mediators. The Florida
441 Conflict Resolution Consortium shall provide all of the
442 administrative support for the mediation process. The mediation
443 must be completed at least 15 days before the final hearing date
444 set by the administrative law judge.

445 (f) In any administrative proceeding brought by the



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446 department, the prevailing party shall recover all costs as
447 provided in ss. 57.041 and 57.071. The costs must be included in
448 the final order. The respondent is the prevailing party when an
449 order is entered awarding no penalties to the department and
450 such order has not been reversed on appeal or the time for
451 seeking judicial review has expired. The respondent is ~~shall be~~
452 entitled to an award of attorney's fees if the administrative
453 law judge determines that the notice of violation issued by the
454 department seeking the imposition of administrative penalties
455 was not substantially justified as defined in s. 57.111(3)(e).
456 An ~~No~~ award of attorney's fees as provided by this subsection
457 may not ~~shall~~ exceed \$15,000.

458 (g) Nothing herein shall be construed as preventing any
459 other legal or administrative action in accordance with law.
460 Nothing in this subsection shall limit the department's
461 authority provided in ss. 403.131, 403.141, and this section to
462 judicially pursue injunctive relief. When the department
463 exercises its authority to judicially pursue injunctive relief,
464 penalties in any amount up to the statutory maximum sought by
465 the department must be pursued as part of the state court action
466 and not by initiating a separate administrative proceeding. The
467 department retains the authority to judicially pursue penalties
468 in excess of \$50,000 ~~\$10,000~~ for violations not specifically
469 included in the administrative penalty schedule, or for multiple
470 or multiday violations alleged to exceed a total of \$50,000
471 ~~\$10,000~~. The department also retains the authority provided in
472 ss. 403.131, 403.141, and this section to judicially pursue
473 injunctive relief and damages, if a notice of violation seeking
474 the imposition of administrative penalties has not been issued.



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475 The department has the authority to enter into a settlement,
476 either before or after initiating a notice of violation, and the
477 settlement may include a penalty amount different from the
478 administrative penalty schedule. Any case filed in state court
479 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in
480 penalties may be settled in the court action for less than
481 \$50,000 ~~\$10,000~~.

482 (h) Chapter 120 applies ~~shall apply~~ to any administrative
483 action taken by the department or any delegated program pursuing
484 administrative penalties in accordance with this section.

485 (3) Except for violations involving hazardous wastes,
486 asbestos, or underground injection, administrative penalties
487 must be calculated according to the following schedule:

488 (a) For a drinking water contamination violation, the
489 department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum
490 Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the
491 violation is for a primary inorganic, organic, or radiological
492 Maximum Contaminant Level or it is a fecal coliform bacteria
493 violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a
494 community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum
495 Contaminant Level is exceeded by more than 100 percent. For
496 failure to obtain a clearance letter prior to placing a drinking
497 water system into service when the system would not have been
498 eligible for clearance, the department shall assess a penalty of
499 \$4,500 ~~\$3,000~~.

500 (b) For failure to obtain a required wastewater permit,
501 other than a permit required for surface water discharge, the
502 department shall assess a penalty of \$1,500 ~~\$1,000~~. For a
503 domestic or industrial wastewater violation not involving a



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504 surface water or groundwater quality violation, the department
505 shall assess a penalty of \$3,000 ~~\$2,000~~ for an unpermitted or
506 unauthorized discharge or effluent-limitation exceedance. For an
507 unpermitted or unauthorized discharge or effluent-limitation
508 exceedance that resulted in a surface water or groundwater
509 quality violation, the department shall assess a penalty of
510 \$7,500 ~~\$5,000~~. Each day the cause of an unauthorized discharge
511 of domestic wastewater is not addressed constitutes a separate
512 offense.

513 (c) For a dredge and fill or stormwater violation, the
514 department shall assess a penalty of \$1,500 ~~\$1,000~~ for
515 unpermitted or unauthorized dredging or filling or unauthorized
516 construction of a stormwater management system against the
517 person or persons responsible for the illegal dredging or
518 filling, or unauthorized construction of a stormwater management
519 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
520 an aquatic preserve, an Outstanding Florida Water, a
521 conservation easement, or a Class I or Class II surface water,
522 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
523 one-quarter acre but less than or equal to one-half acre, and
524 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
525 one-half acre but less than or equal to one acre. The
526 administrative penalty schedule does ~~shall~~ not apply to a dredge
527 and fill violation if the area dredged or filled exceeds one
528 acre. The department retains the authority to seek the judicial
529 imposition of civil penalties for all dredge and fill violations
530 involving more than one acre. The department shall assess a
531 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
532 mitigation, failure to record a required conservation easement,



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533 or for a water quality violation resulting from dredging or
534 filling activities, stormwater construction activities or
535 failure of a stormwater treatment facility. For stormwater
536 management systems serving less than 5 acres, the department
537 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
538 properly or timely construct a stormwater management system. In
539 addition to the penalties authorized in this subsection, the
540 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
541 against the contractor or agent of the owner or tenant that
542 conducts unpermitted or unauthorized dredging or filling. For
543 purposes of this paragraph, the preparation or signing of a
544 permit application by a person currently licensed under chapter
545 471 to practice as a professional engineer does ~~shall~~ not make
546 that person an agent of the owner or tenant.

547 (d) For mangrove trimming or alteration violations, the
548 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
549 against the contractor or agent of the owner or tenant that
550 conducts mangrove trimming or alteration without a permit as
551 required by s. 403.9328. For purposes of this paragraph, the
552 preparation or signing of a permit application by a person
553 currently licensed under chapter 471 to practice as a
554 professional engineer does ~~shall~~ not make that person an agent
555 of the owner or tenant.

556 (e) For solid waste violations, the department shall assess
557 a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or unauthorized
558 disposal or storage of solid waste; plus \$1,000 if the solid
559 waste is Class I or Class III (excluding yard trash) or if the
560 solid waste is construction and demolition debris in excess of
561 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is disposed of



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562 or stored in any natural or artificial body of water or within
563 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~ if the
564 waste contains PCB at a concentration of 50 parts per million or
565 greater; untreated biomedical waste; friable asbestos greater
566 than 1 cubic meter which is not wetted, bagged, and covered;
567 used oil greater than 25 gallons; or 10 or more lead acid
568 batteries. The department shall assess a penalty of \$4,500
569 ~~\$3,000~~ for failure to properly maintain leachate control;
570 unauthorized burning; failure to have a trained spotter on duty
571 at the working face when accepting waste; or failure to provide
572 access control for three consecutive inspections. The department
573 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
574 or maintain a required stormwater management system.

575 (f) For an air emission violation, the department shall
576 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or
577 unauthorized air emission or an air-emission-permit exceedance,
578 ~~plus \$1,000 if the emission results in an air quality violation,~~
579 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
580 the source was major for the pollutant in violation; plus \$1,500
581 ~~\$1,000~~ if the emission was more than 150 percent of the
582 allowable level.

583 (g) For storage tank system and petroleum contamination
584 violations, the department shall assess a penalty of \$7,500
585 ~~\$5,000~~ for failure to empty a damaged storage system as
586 necessary to ensure that a release does not occur until repairs
587 to the storage system are completed; when a release has occurred
588 from that storage tank system; for failure to timely recover
589 free product; or for failure to conduct remediation or
590 monitoring activities until a no-further-action or site-



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591 rehabilitation completion order has been issued. The department
592 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely
593 upgrade a storage tank system. The department shall assess a
594 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain
595 required release detection; failure to timely investigate a
596 suspected release from a storage system; depositing motor fuel
597 into an unregistered storage tank system; failure to timely
598 assess or remediate petroleum contamination; or failure to
599 properly install a storage tank system. The department shall
600 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly
601 operate, maintain, or close a storage tank system.

602 (4) In an administrative proceeding, in addition to the
603 penalties that may be assessed under subsection (3), the
604 department shall assess administrative penalties according to
605 the following schedule:

606 (a) For failure to satisfy financial responsibility
607 requirements or for violation of s. 377.371(1), \$7,500 ~~\$5,000~~.

608 (b) For failure to install, maintain, or use a required
609 pollution control system or device, \$6,000 ~~\$4,000~~.

610 (c) For failure to obtain a required permit before
611 construction or modification, \$4,500 ~~\$3,000~~.

612 (d) For failure to conduct required monitoring or testing;
613 failure to conduct required release detection; or failure to
614 construct in compliance with a permit, \$3,000 ~~\$2,000~~.

615 (e) For failure to maintain required staff to respond to
616 emergencies; failure to conduct required training; failure to
617 prepare, maintain, or update required contingency plans; failure
618 to adequately respond to emergencies to bring an emergency
619 situation under control; or failure to submit required



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620 notification to the department, \$1,500 ~~\$1,000~~.

621 (f) Except as provided in subsection (2) with respect to
622 public water systems serving a population of more than 10,000,
623 for failure to prepare, submit, maintain, or use required
624 reports or other required documentation, \$750 ~~\$500~~.

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

630 (6) For each additional day during which a violation
631 occurs, the administrative penalties in subsections ~~subsection~~
632 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day
633 per violation.

634 (7) The history of noncompliance of the violator for any
635 previous violation resulting in an executed consent order, but
636 not including a consent order entered into without a finding of
637 violation, or resulting in a final order or judgment after the
638 effective date of this law involving the imposition of \$3,000
639 ~~\$2,000~~ or more in penalties shall be taken into consideration in
640 the following manner:

641 (a) One previous such violation within 5 years prior to the
642 filing of the notice of violation will result in a 25-percent
643 per day increase in the scheduled administrative penalty.

644 (b) Two previous such violations within 5 years prior to
645 the filing of the notice of violation will result in a 50-
646 percent per day increase in the scheduled administrative
647 penalty.

648 (c) Three or more previous such violations within 5 years



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649 prior to the filing of the notice of violation will result in a
650 100-percent per day increase in the scheduled administrative
651 penalty.

652 (8) The direct economic benefit gained by the violator from
653 the violation, where consideration of economic benefit is
654 provided by Florida law or required by federal law as part of a
655 federally delegated or approved program, shall be added to the
656 scheduled administrative penalty. The total administrative
657 penalty, including any economic benefit added to the scheduled
658 administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

659 (9) The administrative penalties assessed for any
660 particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against
661 any one violator, unless the violator has a history of
662 noncompliance, the economic benefit of the violation as
663 described in subsection (8) exceeds \$7,500 ~~\$5,000~~, or there are
664 multiday violations. The total administrative penalties may
665 ~~shall~~ not exceed \$50,000 ~~\$10,000~~ per assessment for all
666 violations attributable to a specific person in the notice of
667 violation.

668 (10) The administrative law judge may receive evidence in
669 mitigation. The penalties identified in subsections ~~subsection~~
670 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50
671 percent by the administrative law judge for mitigating
672 circumstances, including good faith efforts to comply prior to
673 or after discovery of the violations by the department. Upon an
674 affirmative finding that the violation was caused by
675 circumstances beyond the reasonable control of the respondent
676 and could not have been prevented by respondent's due diligence,
677 the administrative law judge may further reduce the penalty.



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678 (11) Penalties collected pursuant to this section shall be
679 deposited into the Water Quality Assurance Trust Fund or other
680 trust fund designated by statute and shall be used to fund the
681 restoration of ecosystems, or polluted areas of the state, as
682 defined by the department, to their condition before pollution
683 occurred. The Florida Conflict Resolution Consortium may use a
684 portion of the fund to administer the mediation process provided
685 in paragraph (2)(e) and to contract with private mediators for
686 administrative penalty cases.

687 (12) The purpose of the administrative penalty schedule and
688 process is to provide a more predictable and efficient manner
689 for individuals and businesses to resolve relatively minor
690 environmental disputes. Subsections (3)-(7) may ~~Subsection (3),~~
691 ~~subsection (4), subsection (5), subsection (6), or subsection~~
692 ~~(7) shall~~ not be construed as limiting a state court in the
693 assessment of damages. The administrative penalty schedule does
694 not apply to the judicial imposition of civil penalties in state
695 court as provided in this section.

696 Section 15. Subsection (1) of section 403.141, Florida
697 Statutes, is amended to read:

698 403.141 Civil liability; joint and several liability.-

699 (1) A person who ~~Whoever~~ commits a violation specified in
700 s. 403.161(1) is liable to the state for any damage caused to
701 the air, waters, or property, including animal, plant, or
702 aquatic life, of the state and for reasonable costs and expenses
703 of the state in tracing the source of the discharge, in
704 controlling and abating the source and the pollutants, and in
705 restoring the air, waters, and property, including animal,
706 plant, and aquatic life, of the state to their former condition,



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707 and furthermore is subject to the judicial imposition of a civil
708 penalty for each offense in an amount of not more than \$15,000
709 ~~\$10,000~~ per offense. However, the court may receive evidence in
710 mitigation. Each day during any portion of which such violation
711 occurs constitutes a separate offense. If a violation is an
712 unauthorized discharge of domestic wastewater, each day the
713 cause of the violation is not addressed constitutes a separate
714 offense until the violation is resolved by order or judgment.
715 Nothing herein gives ~~shall give~~ the department the right to
716 bring an action on behalf of any private person.

717 Section 16. Subsections (2) through (5) of section 403.161,
718 Florida Statutes, are amended to read:

719 403.161 Prohibitions, violation, penalty, intent.—

720 (2) A person who ~~Whoever~~ commits a violation specified in
721 subsection (1) is liable to the state for any damage caused and
722 for civil penalties as provided in s. 403.141.

723 (3) A ~~Any~~ person who willfully commits a violation
724 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
725 the third degree, punishable as provided in ss. 775.082(3)(e)
726 and 775.083(1)(g) by a fine of not more than \$50,000 or by
727 imprisonment for 5 years, or by both, for each offense. Each day
728 during any portion of which such violation occurs constitutes a
729 separate offense.

730 (4) A ~~Any~~ person who commits a violation specified in
731 paragraph (1)(a) or paragraph (1)(b) due to reckless
732 indifference or gross careless disregard commits ~~is guilty of~~ a
733 misdemeanor of the second degree, punishable as provided in ss.
734 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
735 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each



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736 offense.

737 (5) A ~~Any~~ person who willfully commits a violation
738 specified in paragraph (1)(b) or who commits a violation
739 specified in paragraph (1)(c) commits ~~is guilty of~~ a misdemeanor
740 of the first degree punishable as provided in ss. 775.082(4)(a)
741 and 775.083(1)(g) by a fine of not more than \$10,000 or by 6
742 months in jail, or by both for each offense.

743 Section 17. Paragraph (a) of subsection (6) of section
744 403.413, Florida Statutes, is amended to read:

745 403.413 Florida Litter Law.—

746 (6) PENALTIES; ENFORCEMENT.—

747 (a) Any person who dumps litter in violation of subsection
748 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
749 feet in volume and not for commercial purposes commits ~~is guilty~~
750 ~~of~~ a noncriminal infraction, punishable by a civil penalty of
751 \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid
752 Waste Management Trust Fund to be used for the solid waste
753 management grant program pursuant to s. 403.7095. In addition,
754 the court may require the violator to pick up litter or perform
755 other labor commensurate with the offense committed.

756 Section 18. Subsection (5) of section 403.7234, Florida
757 Statutes, is amended to read:

758 403.7234 Small quantity generator notification and
759 verification program.—

760 (5) Any small quantity generator who does not comply with
761 the requirements of subsection (4) and who has received a
762 notification and survey in person or through one certified
763 letter from the county is subject to a fine of between \$75 ~~\$50~~
764 and \$150 ~~\$100~~ per day for a maximum of 100 days. The county may



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765 collect such fines and deposit them in its general revenue fund.
766 Fines collected by the county shall be used to carry out the
767 notification and verification procedure established in this
768 section. If there are excess funds after the notification and
769 verification procedures have been completed, such funds shall be
770 used for hazardous and solid waste management purposes only.

771 Section 19. Subsection (3) of section 403.726, Florida
772 Statutes, is amended to read:

773 403.726 Abatement of imminent hazard caused by hazardous
774 substance.—

775 (3) An imminent hazard exists if any hazardous substance
776 creates an immediate and substantial danger to human health,
777 safety, or welfare or to the environment. The department may
778 institute action in its own name, using the procedures and
779 remedies of s. 403.121 or s. 403.131, to abate an imminent
780 hazard. However, the department is authorized to recover a civil
781 penalty of not more than \$37,500 ~~\$25,000~~ for each day of
782 continued violation. Whenever serious harm to human health,
783 safety, and welfare; the environment; or private or public
784 property may occur prior to completion of an administrative
785 hearing or other formal proceeding that which might be initiated
786 to abate the risk of serious harm, the department may obtain, ex
787 parte, an injunction without paying filing and service fees
788 prior to the filing and service of process.

789 Section 20. Paragraph (a) of subsection (3) of section
790 403.727, Florida Statutes, is amended to read:

791 403.727 Violations; defenses, penalties, and remedies.—

792 (3) Violations of the provisions of this act are punishable
793 as follows:



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794 (a) Any person who violates ~~the provisions of~~ this act, the
795 rules or orders of the department, or the conditions of a permit
796 is liable to the state for any damages specified in s. 403.141
797 and for a civil penalty of not more than \$75,000 ~~\$50,000~~ for
798 each day of continued violation, except as otherwise provided
799 herein. The department may revoke any permit issued to the
800 violator. In any action by the department against a small
801 hazardous waste generator for the improper disposal of hazardous
802 wastes, a rebuttable presumption of improper disposal shall be
803 created if the generator was notified pursuant to s. 403.7234;
804 the generator shall then have the burden of proving that the
805 disposal was proper. If the generator was not so notified, the
806 burden of proving improper disposal shall be placed upon the
807 department.

808 Section 21. Subsection (8) of section 403.93345, Florida
809 Statutes, is amended to read:

810 403.93345 Coral reef protection.—

811 (8) In addition to the compensation described in subsection
812 (5), the department may assess, per occurrence, civil penalties
813 according to the following schedule:

814 (a) For any anchoring of a vessel on a coral reef or for
815 any other damage to a coral reef totaling less than or equal to
816 an area of 1 square meter, \$225 ~~\$150~~, provided that a
817 responsible party who has anchored a recreational vessel as
818 defined in s. 327.02 which is lawfully registered or exempt from
819 registration pursuant to chapter 328 is issued, at least once, a
820 warning letter in lieu of penalty; with aggravating
821 circumstances, an additional \$225 ~~\$150~~; occurring within a state
822 park or aquatic preserve, an additional \$225 ~~\$150~~.



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823 (b) For damage totaling more than an area of 1 square meter
824 but less than or equal to an area of 10 square meters, \$450 ~~\$300~~
825 per square meter; with aggravating circumstances, an additional
826 \$450 ~~\$300~~ per square meter; occurring within a state park or
827 aquatic preserve, an additional \$450 ~~\$300~~ per square meter.

828 (c) For damage exceeding an area of 10 square meters,
829 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,
830 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a
831 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per
832 square meter.

833 (d) For a second violation, the total penalty may be
834 doubled.

835 (e) For a third violation, the total penalty may be
836 tripled.

837 (f) For any violation after a third violation, the total
838 penalty may be quadrupled.

839 (g) The total of penalties levied may not exceed \$375,000
840 ~~\$250,000~~ per occurrence.

841 Section 22. Subsection (5) of s. 823.11, Florida Statutes,
842 is reenacted for the purpose of incorporating the amendment made
843 by this act to s. 376.16, Florida Statutes, in a reference
844 thereto.

845 Section 23. Subsection (5) of s. 403.077, subsection (2) of
846 s. 403.131, paragraph (d) of subsection (3) of s. 403.4154, and
847 subsection (5) of s. 403.860, Florida Statutes, are reenacted
848 for the purpose of incorporating the amendment made by this act
849 to s. 403.121, Florida Statutes, in references thereto.

850 Section 24. Subsection (10) of s. 403.708, subsection (7)
851 of s. 403.7191, and s. 403.811, Florida Statutes, are reenacted



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852 for the purpose of incorporating the amendment made by this act
853 to s. 403.141, Florida Statutes, in references thereto.

854 Section 25. Subsection (2) of s. 403.7255, Florida
855 Statutes, is reenacted for the purpose of incorporating the
856 amendment made by this act to s. 403.161, Florida Statutes, in a
857 reference thereto.

858 Section 26. Subsection (8) of s. 403.7186, Florida
859 Statutes, is reenacted for the purpose of incorporating the
860 amendments made by this act to ss. 403.141 and 403.161, Florida
861 Statutes, in references thereto.

862 Section 27. This act shall take effect July 1, 2020.

863

864 ===== T I T L E A M E N D M E N T =====

865 And the title is amended as follows:

866 Delete everything before the enacting clause
867 and insert:

868 A bill to be entitled
869 An act relating to environmental enforcement; amending
870 s. 161.054, F.S.; revising administrative penalties
871 for violations of certain provisions relating to beach
872 and shore construction and activities; making
873 technical changes; amending ss. 258.397, 258.46, and
874 376.25, F.S.; revising civil penalties for violations
875 of certain provisions relating to the Biscayne Bay
876 Aquatic Preserve, aquatic preserves, and the Clean
877 Ocean Act, respectively; providing that each day that
878 certain violations occur constitutes a separate
879 offense; making technical changes; amending ss.
880 373.129, 373.209, 376.065, 376.071, 376.16, 377.37,



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881 378.211, 403.086, 403.413, 403.7234, and 403.93345,
882 F.S.; revising civil penalties for violations of
883 certain provisions relating to water resources,
884 artesian wells, terminal facilities, discharge
885 contingency plans for vessels, the Pollutant Discharge
886 Prevention and Control Act, regulation of oil and gas
887 resources, the Phosphate Land Reclamation Act, sewage
888 disposal facilities, dumping litter, small quantity
889 generators, and coral reef protection, respectively;
890 making technical changes; amending ss. 373.430 and
891 403.161, F.S.; revising criminal penalties for
892 violations of certain provisions relating to pollution
893 and the environment; making technical changes;
894 amending s. 403.121, F.S.; revising civil and
895 administrative penalties for violations of certain
896 provisions relating to pollution and the environment;
897 providing that each day that certain violations occur
898 constitutes a separate offense; increasing the amount
899 of penalties that can be assessed administratively;
900 making technical changes; amending s. 403.141, F.S.;
901 revising civil penalties for violations of certain
902 provisions relating to pollution and the environment;
903 providing that each day that the cause of unauthorized
904 discharges of domestic wastewater is not addressed
905 constitutes a separate offense until the violation is
906 resolved by order or judgment; amending ss. 403.726
907 and 403.727, F.S.; revising civil penalties for
908 violations of certain provisions relating to hazardous
909 waste; making technical changes; reenacting s.



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910 823.11(5), F.S., to incorporate the amendment made to
911 s. 376.16, F.S., in a reference thereto; reenacting
912 ss. 403.077(5), 403.131(2), 403.4154(3)(d), and
913 403.860(5), F.S., to incorporate the amendment made to
914 s. 403.121, F.S., in a reference thereto; reenacting
915 ss. 403.708(10), 403.7191(7), and 403.811, F.S., to
916 incorporate the amendment made to s. 403.141, F.S., in
917 a reference thereto; reenacting s. 403.7255(2), F.S.,
918 to incorporate the amendment made to s. 403.161, F.S.,
919 in a reference thereto; reenacting s. 403.7186(8),
920 F.S., to incorporate the amendments made to ss.
921 403.141 and 403.161, F.S., in references thereto;
922 providing an effective date.