

By the Committee on Environment and Natural Resources; and
Senator Gruters

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1 A bill to be entitled
2 An act relating to environmental enforcement; amending
3 s. 161.054, F.S.; revising administrative penalties
4 for violations of certain provisions relating to beach
5 and shore construction and activities; providing that
6 each day that certain violations occur or are not
7 remediated constitutes a separate offense until such
8 violations are resolved by order or judgment; making
9 technical changes; amending ss. 258.397, 258.46,
10 373.129, 376.16, 376.25, 377.37, 378.211, and 403.141,
11 F.S.; revising civil penalties for violations of
12 certain provisions relating to the Biscayne Bay
13 Aquatic Preserve, aquatic preserves, water resources,
14 the Pollutant Discharge Prevention and Control Act,
15 the Clean Ocean Act, regulation of oil and gas
16 resources, the Phosphate Land Reclamation Act, and
17 other provisions relating to pollution and the
18 environment, respectively; providing that each day
19 that certain violations occur or are not remediated
20 constitutes a separate offense until such violations
21 are resolved by order or judgment; making technical
22 changes; amending ss. 373.209, 376.065, 376.071,
23 403.086, 403.413, 403.7234, and 403.93345, F.S.;
24 revising civil penalties for violations of certain
25 provisions relating to artesian wells, terminal
26 facilities, discharge contingency plans for vessels,
27 sewage disposal facilities, dumping litter, small
28 quantity generators, and coral reef protection,
29 respectively; making technical changes; amending ss.

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30 373.430 and 403.161, F.S.; revising criminal penalties
31 for violations of certain provisions relating to
32 pollution and the environment; providing that each day
33 that certain violations occur or are not remediated
34 constitutes a separate offense until such violations
35 are resolved by order or judgment; making technical
36 changes; amending s. 403.121, F.S.; revising civil and
37 administrative penalties for violations of certain
38 provisions relating to pollution and the environment;
39 providing that each day that certain violations occur
40 or are not remediated constitutes a separate offense
41 until such violations are resolved by order or
42 judgment; increasing the amount of penalties that can
43 be assessed administratively; making technical
44 changes; amending ss. 403.726 and 403.727, F.S.;
45 revising civil penalties for violations of certain
46 provisions relating to hazardous waste for each day
47 that certain violations occur and are not resolved by
48 order or judgment; making technical changes;
49 reenacting s. 823.11(5), F.S., to incorporate the
50 amendment made to s. 376.16, F.S., in a reference
51 thereto; reenacting ss. 403.077(5), 403.131(2),
52 403.4154(3)(d), and 403.860(5), F.S., to incorporate
53 the amendment made to s. 403.121, F.S., in a reference
54 thereto; reenacting ss. 403.708(10), 403.7191(7), and
55 403.811, F.S., to incorporate the amendment made to s.
56 403.141, F.S., in a reference thereto; reenacting s.
57 403.7255(2), F.S., to incorporate the amendment made
58 to s. 403.161, F.S., in a reference thereto;

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59 reenacting s. 403.7186(8), F.S., to incorporate the
60 amendment made to ss. 403.141 and 403.161, F.S., in
61 references thereto; providing an effective date.
62

63 Be It Enacted by the Legislature of the State of Florida:
64

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

67 161.054 Administrative fines; liability for damage; liens.-

68 (1) In addition to the penalties provided for in ss.
69 161.052, 161.053, and 161.121, any person, firm, corporation, or
70 governmental agency, or agent thereof, refusing to comply with
71 or willfully violating ~~any of the provisions of~~ s. 161.041, s.
72 161.052, or s. 161.053, or any rule or order prescribed by the
73 department thereunder, shall incur a fine for each offense in an
74 amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected
75 by the department. Until a violation is resolved by order or
76 judgment, each day during any portion of which such violation
77 occurs or is not remediated constitutes a separate offense.

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

80 258.397 Biscayne Bay Aquatic Preserve.-

81 (7) ENFORCEMENT. ~~The provisions of~~ This section may be
82 enforced in accordance with ~~the provisions of~~ s. 403.412. In
83 addition, the Department of Legal Affairs may ~~is authorized to~~
84 bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day
85 against any person, natural or corporate, who violates ~~the~~
86 ~~provisions of~~ this section or any rule or regulation issued
87 hereunder. Until a violation is resolved by order or judgment,

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88 each day during any portion of which such violation occurs or is
89 not remediated constitutes a separate offense. Enforcement of
90 applicable state regulations shall be supplemented by the Miami-
91 Dade County Department of Environmental Resources Management
92 through the creation of a full-time enforcement presence along
93 the Miami River.

94 Section 3. Section 258.46, Florida Statutes, is amended to
95 read:

96 258.46 Enforcement; violations; penalty. ~~The provisions of~~
97 This act may be enforced by the Board of Trustees of the
98 Internal Improvement Trust Fund or in accordance with ~~the~~
99 ~~provisions of~~ s. 403.412. However, any violation by any person,
100 natural or corporate, of ~~the provisions of~~ this act or any rule
101 or regulation issued hereunder is shall be further punishable by
102 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
103 \$7,500 ~~\$5,000~~ per day of such violation. Until a violation is
104 resolved by order or judgment, each day during any portion of
105 which such violation occurs or is not remediated constitutes a
106 separate offense.

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

109 373.129 Maintenance of actions.—The department, the
110 governing board of any water management district, any local
111 board, or a local government to which authority has been
112 delegated pursuant to s. 373.103(8), is authorized to commence
113 and maintain proper and necessary actions and proceedings in any
114 court of competent jurisdiction for any of the following
115 purposes:

116 (5) To recover a civil penalty for each offense in an

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117 amount not to exceed \$15,000 ~~\$10,000~~ per offense. Until a
118 violation is resolved by order or judgment, each date during any
119 portion of which such violation occurs or is not remediated
120 constitutes a separate offense.

121 (a) A civil penalty recovered by a water management
122 district pursuant to this subsection shall be retained and used
123 exclusively by the water management district that collected the
124 money. A civil penalty recovered by the department pursuant to
125 this subsection must be deposited into the Water Quality
126 Assurance Trust Fund established under s. 376.307.

127 (b) A local government that is delegated authority pursuant
128 to s. 373.103(8) may deposit a civil penalty recovered pursuant
129 to this subsection into a local water pollution control program
130 trust fund, notwithstanding ~~the provisions of~~ paragraph (a).
131 However, civil penalties that are deposited in a local water
132 pollution control program trust fund and that are recovered for
133 violations of state water quality standards may be used only to
134 restore water quality in the area that was the subject of the
135 action, and civil penalties that are deposited in a local water
136 pollution control program trust fund and that are recovered for
137 violation of requirements relating to water quantity may be used
138 only to purchase lands and make capital improvements associated
139 with surface water management, or other purposes consistent with
140 the requirements of this chapter for the management and storage
141 of surface water.

142 (7) To ~~enforce the provisions of~~ part IV of this chapter in
143 the same manner and to the same extent as provided in ss.
144 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

145 Section 5. Subsection (3) of section 373.209, Florida

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146 Statutes, is amended to read:

147 373.209 Artesian wells; penalties for violation.—

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

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

151 (b) A civil penalty of \$150 ~~\$100~~ a day for each and every
152 day of such violation and for each and every act of violation.
153 The civil penalty may be recovered by the water management board
154 of the water management district in which the well is located or
155 by the department in a suit in a court of competent jurisdiction
156 in the county where the defendant resides, in the county of
157 residence of any defendant if there is more than one defendant,
158 or in the county where the violation took place. The place of
159 suit shall be selected by the board or department, and the suit,
160 by direction of the board or department, shall be instituted and
161 conducted in the name of the board or department by appropriate
162 counsel. The payment of any such damages does not impair or
163 abridge any cause of action which any person may have against
164 the person violating ~~any provision of~~ this section.

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

167 373.430 Prohibitions, violation, penalty, intent.—

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

171 (3) A ~~Any~~ person who willfully commits a violation
172 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
173 the third degree, punishable as provided in ss. 775.082(3)(e)
174 and 775.083(1)(g), by a fine of not more than \$50,000 or by

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175 imprisonment for 5 years, or by both, for each offense. Until a
176 violation is resolved by order or judgment, each day during any
177 portion of which such violation occurs or is not remediated
178 constitutes a separate offense.

179 (4) A ~~Any~~ person who commits a violation specified in
180 paragraph (1) (a) or paragraph (1) (b) due to reckless
181 indifference or gross careless disregard commits ~~is guilty of~~ a
182 misdemeanor of the second degree, punishable as provided in ss.
183 775.082(4) (b) and 775.083(1) (g), by a fine of not more than
184 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

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

191 Section 7. Paragraphs (a) and (e) of subsection (5) of
192 section 376.065, Florida Statutes, are amended to read:

193 376.065 Operation of terminal facility without discharge
194 prevention and response certificate prohibited; penalty.—

195 (5) (a) A person who violates this section or the terms and
196 requirements of such certification commits a noncriminal
197 infraction. The civil penalty for any such infraction shall be
198 \$750 ~~\$500~~, except as otherwise provided in this section.

199 (e) A person who elects to appear before the county court
200 or who is required to so appear waives the limitations of the
201 civil penalty specified in paragraph (a). The court, after a
202 hearing, shall make a determination as to whether an infraction
203 has been committed. If the commission of the infraction is

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204 proved, the court shall impose a civil penalty of \$750 ~~\$500~~.

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

207 376.071 Discharge contingency plan for vessels.—

208 (2) (a) A master of a vessel that violates subsection (1)
209 commits a noncriminal infraction and shall be cited for such
210 infraction. The civil penalty for such an infraction shall be
211 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

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

218 Section 9. Section 376.16, Florida Statutes, is amended to
219 read:

220 376.16 Enforcement and penalties.—

221 (1) It is unlawful for any person to violate ~~any provision~~
222 ~~of~~ ss. 376.011-376.21 or any rule or order of the department
223 made pursuant to this act. A violation is ~~shall be~~ punishable by
224 a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day
225 to be assessed by the department. Until a violation is resolved
226 by order or judgment, each day during any portion of which the
227 violation occurs or is not remediated constitutes a separate
228 offense. The penalty provisions of this subsection do ~~shall~~ not
229 apply to any discharge promptly reported and removed by a person
230 responsible, in accordance with the rules and orders of the
231 department, or to any discharge of pollutants equal to or less
232 than 5 gallons.

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

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

244 (b) For discharges of any pollutant other than gasoline or
245 diesel, the civil penalty for a second discharge shall be \$3,750
246 ~~\$2,500~~ and the civil penalty for each subsequent discharge
247 within a 12-month period shall be \$7,500 ~~\$5,000~~, except as
248 otherwise provided in this section.

249 (3) A person responsible for two or more discharges of any
250 pollutant reported pursuant to s. 376.12 within a 12-month
251 period at the same facility commits a noncriminal infraction and
252 shall be cited by the department for such infraction.

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

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

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

261 (a) Pay the civil penalty;

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

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

266

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

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

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

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

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

280

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

286 (7) Any person who elects to appear before the county court
287 or who is required to appear waives the limitations of the civil
288 penalties specified in subsection (2). The court, after a
289 hearing, shall make a determination as to whether an infraction
290 has been committed. If the commission of an infraction is

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291 proved, the court may impose a civil penalty up to, but not
292 exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or
293 diesel and a civil penalty up to, but not exceeding, \$1,500
294 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel
295 within a 12-month period.

296 (8) Any person who elects to appear before the county court
297 or who is required to appear waives the limitations of the civil
298 penalties specified in subsection (2) or subsection (3). The
299 court, after a hearing, shall make a determination as to whether
300 an infraction has been committed. If the commission of an
301 infraction is proved, the court may impose a civil penalty up
302 to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of
303 pollutants other than gasoline or diesel and a civil penalty up
304 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent
305 discharge of pollutants other than gasoline or diesel within a
306 12-month period.

307 (9) At a hearing under this section, the commission of a
308 charged offense must be proved by the greater weight of the
309 evidence.

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

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

318 (12) Any person who makes or causes to be made a false
319 statement that ~~which~~ the person does not believe to be true in

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320 response to requirements of ~~the provisions of~~ ss. 376.011-376.21
321 commits a felony of the second degree, punishable as provided in
322 s. 775.082, s. 775.083, or s. 775.084.

323 Section 10. Paragraph (a) of subsection (6) of section
324 376.25, Florida Statutes, is amended to read:

325 376.25 Gambling vessels; registration; required and
326 prohibited releases.-

327 (6) PENALTIES.-

328 (a) A person who violates this section is subject to a
329 civil penalty of not more than \$75,000 ~~\$50,000~~ for each
330 violation. Until a violation is resolved by order or judgment,
331 each day during any portion of which such violation occurs or is
332 not remediated constitutes a separate offense.

333 Section 11. Paragraph (a) of subsection (1) of section
334 377.37, Florida Statutes, is amended to read:

335 377.37 Penalties.-

336 (1) (a) Any person who violates ~~any provision of~~ this law or
337 any rule, regulation, or order of the division made under this
338 chapter or who violates the terms of any permit to drill for or
339 produce oil, gas, or other petroleum products referred to in s.
340 377.242(1) or to store gas in a natural gas storage facility, or
341 any lessee, permitholder, or operator of equipment or facilities
342 used in the exploration for, drilling for, or production of oil,
343 gas, or other petroleum products, or storage of gas in a natural
344 gas storage facility, who refuses inspection by the division as
345 provided in this chapter, is liable to the state for any damage
346 caused to the air, waters, or property, including animal, plant,
347 or aquatic life, of the state and for reasonable costs and
348 expenses of the state in tracing the source of the discharge, in

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349 controlling and abating the source and the pollutants, and in
350 restoring the air, waters, and property, including animal,
351 plant, and aquatic life, of the state. Furthermore, such person,
352 lessee, permitholder, or operator is subject to the judicial
353 imposition of a civil penalty in an amount of not more than
354 \$15,000 ~~\$10,000~~ for each offense. However, the court may receive
355 evidence in mitigation. Until a violation is resolved by order
356 or judgment, each day during any portion of which such violation
357 occurs or is not remediated constitutes a separate offense. This
358 section does not ~~Nothing herein shall~~ give the department the
359 right to bring an action on behalf of any private person.

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

362 378.211 Violations; damages; penalties.—

363 (2) The department may institute a civil action in a court
364 of competent jurisdiction to impose and recover a civil penalty
365 for violation of this part or of any rule adopted or order
366 issued pursuant to this part. The penalty may ~~shall~~ not exceed
367 the following amounts, and the court shall consider evidence in
368 mitigation:

369 (a) For violations of a minor or technical nature, \$150
370 ~~\$100~~ per violation.

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

374 (c) For major violations not covered by paragraph (b),
375 \$7,500 ~~\$5,000~~ per violation.

376
377 Subject to ~~the provisions of~~ subsection (4), until a violation

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378 is resolved by order or judgment, each day or any portion
379 thereof in which the violation continues or is not remediated
380 shall constitute a separate violation.

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

383 403.086 Sewage disposal facilities; advanced and secondary
384 waste treatment.—

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

392 Section 14. Section 403.121, Florida Statutes, is amended
393 to read:

394 403.121 Enforcement; procedure; remedies.—The department
395 shall have the following judicial and administrative remedies
396 available to it for violations of this chapter, as specified in
397 s. 403.161(1).

398 (1) Judicial remedies:

399 (a) The department may institute a civil action in a court
400 of competent jurisdiction to establish liability and to recover
401 damages for any injury to the air, waters, or property,
402 including animal, plant, and aquatic life, of the state caused
403 by any violation.

404 (b) The department may institute a civil action in a court
405 of competent jurisdiction to impose and to recover a civil
406 penalty for each violation in an amount of not more than \$15,000

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407 \$10,000 per offense. However, the court may receive evidence in
408 mitigation. Until a violation is resolved by order or judgment,
409 each day during any portion of which such violation occurs or is
410 not remediated constitutes a separate offense.

411 (c) Except as provided in paragraph (2)(c), it is ~~shall~~ not
412 ~~be~~ a defense to, or ground for dismissal of, these judicial
413 remedies for damages and civil penalties that the department has
414 failed to exhaust its administrative remedies, has failed to
415 serve a notice of violation, or has failed to hold an
416 administrative hearing prior to the institution of a civil
417 action.

418 (2) Administrative remedies:

419 (a) The department may institute an administrative
420 proceeding to establish liability and to recover damages for any
421 injury to the air, waters, or property, including animal, plant,
422 or aquatic life, of the state caused by any violation. The
423 department may order that the violator pay a specified sum as
424 damages to the state. Judgment for the amount of damages
425 determined by the department may be entered in any court having
426 jurisdiction thereof and may be enforced as any other judgment.

427 (b) If the department has reason to believe a violation has
428 occurred, it may institute an administrative proceeding to order
429 the prevention, abatement, or control of the conditions creating
430 the violation or other appropriate corrective action. Except for
431 violations involving hazardous wastes, asbestos, or underground
432 injection, the department shall proceed administratively in all
433 cases in which the department seeks administrative penalties
434 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated
435 in accordance with subsections (3), (4), (5), (6), and (7).

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436 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty
437 assessed pursuant to subsection (3), subsection (4), or
438 subsection (5) against a public water system serving a
439 population of more than 10,000 shall be not less than \$1,000 per
440 day per violation. The department may ~~shall~~ not impose
441 administrative penalties in excess of \$50,000 ~~\$10,000~~ in a
442 notice of violation. The department may ~~shall~~ not have more than
443 one notice of violation seeking administrative penalties pending
444 against the same party at the same time unless the violations
445 occurred at a different site or the violations were discovered
446 by the department subsequent to the filing of a previous notice
447 of violation.

448 (c) An administrative proceeding shall be instituted by the
449 department's serving of a written notice of violation upon the
450 alleged violator by certified mail. If the department is unable
451 to effect service by certified mail, the notice of violation may
452 be hand delivered or personally served in accordance with
453 chapter 48. The notice shall specify the ~~provision of the law,~~
454 rule, regulation, permit, certification, or order of the
455 department alleged to be violated and the facts alleged to
456 constitute a violation thereof. An order for corrective action,
457 penalty assessment, or damages may be included with the notice.
458 When the department is seeking to impose an administrative
459 penalty for any violation by issuing a notice of violation, any
460 corrective action needed to correct the violation or damages
461 caused by the violation must be pursued in the notice of
462 violation or they are waived. However, an ~~no~~ order is not ~~shall~~
463 ~~become~~ effective until after service and an administrative
464 hearing, if requested within 20 days after service. Failure to

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465 request an administrative hearing within this time period
466 constitutes ~~shall constitute~~ a waiver thereof, unless the
467 respondent files a written notice with the department within
468 this time period opting out of the administrative process
469 initiated by the department to impose administrative penalties.
470 Any respondent choosing to opt out of the administrative process
471 initiated by the department in an action that seeks the
472 imposition of administrative penalties must file a written
473 notice with the department within 20 days after service of the
474 notice of violation opting out of the administrative process. A
475 respondent's decision to opt out of the administrative process
476 does not preclude the department from initiating a state court
477 action seeking injunctive relief, damages, and the judicial
478 imposition of civil penalties.

479 (d) If a person timely files a petition challenging a
480 notice of violation, that person will thereafter be referred to
481 as the respondent. The hearing requested by the respondent shall
482 be held within 180 days after the department has referred the
483 initial petition to the Division of Administrative Hearings
484 unless the parties agree to a later date. The department has the
485 burden of proving with the preponderance of the evidence that
486 the respondent is responsible for the violation. ~~No~~
487 Administrative penalties should not be imposed unless the
488 department satisfies that burden. Following the close of the
489 hearing, the administrative law judge shall issue a final order
490 on all matters, including the imposition of an administrative
491 penalty. When the department seeks to enforce that portion of a
492 final order imposing administrative penalties pursuant to s.
493 120.69, the respondent may ~~shall~~ not assert as a defense the

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494 inappropriateness of the administrative remedy. The department
495 retains its final-order authority in all administrative actions
496 that do not request the imposition of administrative penalties.

497 (e) After filing a petition requesting a formal hearing in
498 response to a notice of violation in which the department
499 imposes an administrative penalty, a respondent may request that
500 a private mediator be appointed to mediate the dispute by
501 contacting the Florida Conflict Resolution Consortium within 10
502 days after receipt of the initial order from the administrative
503 law judge. The Florida Conflict Resolution Consortium shall pay
504 all of the costs of the mediator and for up to 8 hours of the
505 mediator's time per case at \$150 per hour. Upon notice from the
506 respondent, the Florida Conflict Resolution Consortium shall
507 provide to the respondent a panel of possible mediators from the
508 area in which the hearing on the petition would be heard. The
509 respondent shall select the mediator and notify the Florida
510 Conflict Resolution Consortium of the selection within 15 days
511 of receipt of the proposed panel of mediators. The Florida
512 Conflict Resolution Consortium shall provide all of the
513 administrative support for the mediation process. The mediation
514 must be completed at least 15 days before the final hearing date
515 set by the administrative law judge.

516 (f) In any administrative proceeding brought by the
517 department, the prevailing party shall recover all costs as
518 provided in ss. 57.041 and 57.071. The costs must be included in
519 the final order. The respondent is the prevailing party when an
520 order is entered awarding no penalties to the department and
521 such order has not been reversed on appeal or the time for
522 seeking judicial review has expired. The respondent is ~~shall be~~

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523 entitled to an award of attorney's fees if the administrative
524 law judge determines that the notice of violation issued by the
525 department seeking the imposition of administrative penalties
526 was not substantially justified as defined in s. 57.111(3)(e).
527 An ~~No~~ award of attorney's fees as provided by this subsection
528 may not ~~shall~~ exceed \$15,000.

529 (g) Nothing herein shall be construed as preventing any
530 other legal or administrative action in accordance with law.
531 Nothing in this subsection shall limit the department's
532 authority provided in ss. 403.131, 403.141, and this section to
533 judicially pursue injunctive relief. When the department
534 exercises its authority to judicially pursue injunctive relief,
535 penalties in any amount up to the statutory maximum sought by
536 the department must be pursued as part of the state court action
537 and not by initiating a separate administrative proceeding. The
538 department retains the authority to judicially pursue penalties
539 in excess of \$50,000 ~~\$10,000~~ for violations not specifically
540 included in the administrative penalty schedule, or for multiple
541 or multiday violations alleged to exceed a total of \$50,000
542 ~~\$10,000~~. The department also retains the authority provided in
543 ss. 403.131, 403.141, and this section to judicially pursue
544 injunctive relief and damages, if a notice of violation seeking
545 the imposition of administrative penalties has not been issued.
546 The department has the authority to enter into a settlement,
547 either before or after initiating a notice of violation, and the
548 settlement may include a penalty amount different from the
549 administrative penalty schedule. Any case filed in state court
550 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in
551 penalties may be settled in the court action for less than

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552 \$50,000 ~~\$10,000~~.

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

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

559 (a) For a drinking water contamination violation, the
560 department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum
561 Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the
562 violation is for a primary inorganic, organic, or radiological
563 Maximum Contaminant Level or it is a fecal coliform bacteria
564 violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a
565 community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum
566 Contaminant Level is exceeded by more than 100 percent. For
567 failure to obtain a clearance letter prior to placing a drinking
568 water system into service when the system would not have been
569 eligible for clearance, the department shall assess a penalty of
570 \$4,500 ~~\$3,000~~.

571 (b) For failure to obtain a required wastewater permit,
572 other than a permit required for surface water discharge, the
573 department shall assess a penalty of \$1,500 ~~\$1,000~~. For a
574 domestic or industrial wastewater violation not involving a
575 surface water or groundwater quality violation, the department
576 shall assess a penalty of \$3,000 ~~\$2,000~~ for an unpermitted or
577 unauthorized discharge or effluent-limitation exceedance. For an
578 unpermitted or unauthorized discharge or effluent-limitation
579 exceedance that resulted in a surface water or groundwater
580 quality violation, the department shall assess a penalty of

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581 \$7,500 ~~\$5,000~~.

582 (c) For a dredge and fill or stormwater violation, the
583 department shall assess a penalty of \$1,500 ~~\$1,000~~ for
584 unpermitted or unauthorized dredging or filling or unauthorized
585 construction of a stormwater management system against the
586 person or persons responsible for the illegal dredging or
587 filling, or unauthorized construction of a stormwater management
588 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
589 an aquatic preserve, an Outstanding Florida Water, a
590 conservation easement, or a Class I or Class II surface water,
591 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
592 one-quarter acre but less than or equal to one-half acre, and
593 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
594 one-half acre but less than or equal to one acre. The
595 administrative penalty schedule does ~~shall~~ not apply to a dredge
596 and fill violation if the area dredged or filled exceeds one
597 acre. The department retains the authority to seek the judicial
598 imposition of civil penalties for all dredge and fill violations
599 involving more than one acre. The department shall assess a
600 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
601 mitigation, failure to record a required conservation easement,
602 or for a water quality violation resulting from dredging or
603 filling activities, stormwater construction activities or
604 failure of a stormwater treatment facility. For stormwater
605 management systems serving less than 5 acres, the department
606 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
607 properly or timely construct a stormwater management system. In
608 addition to the penalties authorized in this subsection, the
609 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation

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610 against the contractor or agent of the owner or tenant that
611 conducts unpermitted or unauthorized dredging or filling. For
612 purposes of this paragraph, the preparation or signing of a
613 permit application by a person currently licensed under chapter
614 471 to practice as a professional engineer does ~~shall~~ not make
615 that person an agent of the owner or tenant.

616 (d) For mangrove trimming or alteration violations, the
617 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
618 against the contractor or agent of the owner or tenant that
619 conducts mangrove trimming or alteration without a permit as
620 required by s. 403.9328. For purposes of this paragraph, the
621 preparation or signing of a permit application by a person
622 currently licensed under chapter 471 to practice as a
623 professional engineer does ~~shall~~ not make that person an agent
624 of the owner or tenant.

625 (e) For solid waste violations, the department shall assess
626 a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or unauthorized
627 disposal or storage of solid waste; plus \$1,000 if the solid
628 waste is Class I or Class III (excluding yard trash) or if the
629 solid waste is construction and demolition debris in excess of
630 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is disposed of
631 or stored in any natural or artificial body of water or within
632 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~ if the
633 waste contains PCB at a concentration of 50 parts per million or
634 greater; untreated biomedical waste; friable asbestos greater
635 than 1 cubic meter which is not wetted, bagged, and covered;
636 used oil greater than 25 gallons; or 10 or more lead acid
637 batteries. The department shall assess a penalty of \$4,500
638 ~~\$3,000~~ for failure to properly maintain leachate control;

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639 unauthorized burning; failure to have a trained spotter on duty
640 at the working face when accepting waste; or failure to provide
641 access control for three consecutive inspections. The department
642 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
643 or maintain a required stormwater management system.

644 (f) For an air emission violation, the department shall
645 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or
646 unauthorized air emission or an air-emission-permit exceedance,
647 ~~plus \$1,000 if the emission results in an air quality violation,~~
648 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
649 the source was major for the pollutant in violation; plus \$1,500
650 ~~\$1,000~~ if the emission was more than 150 percent of the
651 allowable level.

652 (g) For storage tank system and petroleum contamination
653 violations, the department shall assess a penalty of \$7,500
654 ~~\$5,000~~ for failure to empty a damaged storage system as
655 necessary to ensure that a release does not occur until repairs
656 to the storage system are completed; when a release has occurred
657 from that storage tank system; for failure to timely recover
658 free product; or for failure to conduct remediation or
659 monitoring activities until a no-further-action or site-
660 rehabilitation completion order has been issued. The department
661 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely
662 upgrade a storage tank system. The department shall assess a
663 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain
664 required release detection; failure to timely investigate a
665 suspected release from a storage system; depositing motor fuel
666 into an unregistered storage tank system; failure to timely
667 assess or remediate petroleum contamination; or failure to

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668 properly install a storage tank system. The department shall
669 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly
670 operate, maintain, or close a storage tank system.

671 (4) In an administrative proceeding, in addition to the
672 penalties that may be assessed under subsection (3), the
673 department shall assess administrative penalties according to
674 the following schedule:

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

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

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

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

684 (e) For failure to maintain required staff to respond to
685 emergencies; failure to conduct required training; failure to
686 prepare, maintain, or update required contingency plans; failure
687 to adequately respond to emergencies to bring an emergency
688 situation under control; or failure to submit required
689 notification to the department, \$1,500 ~~\$1,000~~.

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

694 (5) Except as provided in subsection (2) with respect to
695 public water systems serving a population of more than 10,000,
696 for failure to comply with any other departmental regulatory

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697 statute or rule requirement not otherwise identified in this
698 section, the department may assess a penalty of \$1,000 ~~\$500~~.

699 (6) For each additional day during which a violation
700 occurs, the administrative penalties in subsections ~~subsection~~
701 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day
702 per violation.

703 (7) The history of noncompliance of the violator for any
704 previous violation resulting in an executed consent order, but
705 not including a consent order entered into without a finding of
706 violation, or resulting in a final order or judgment after the
707 effective date of this law involving the imposition of \$3,000
708 ~~\$2,000~~ or more in penalties shall be taken into consideration in
709 the following manner:

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

713 (b) Two previous such violations within 5 years prior to
714 the filing of the notice of violation will result in a 50-
715 percent per day increase in the scheduled administrative
716 penalty.

717 (c) Three or more previous such violations within 5 years
718 prior to the filing of the notice of violation will result in a
719 100-percent per day increase in the scheduled administrative
720 penalty.

721 (8) The direct economic benefit gained by the violator from
722 the violation, where consideration of economic benefit is
723 provided by Florida law or required by federal law as part of a
724 federally delegated or approved program, shall be added to the
725 scheduled administrative penalty. The total administrative

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726 penalty, including any economic benefit added to the scheduled
727 administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

728 (9) The administrative penalties assessed for any
729 particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against
730 any one violator, unless the violator has a history of
731 noncompliance, the economic benefit of the violation as
732 described in subsection (8) exceeds \$7,500 ~~\$5,000~~, or there are
733 multiday violations. The total administrative penalties may
734 ~~shall~~ not exceed \$50,000 ~~\$10,000~~ per assessment for all
735 violations attributable to a specific person in the notice of
736 violation.

737 (10) The administrative law judge may receive evidence in
738 mitigation. The penalties identified in subsections ~~subsection~~
739 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50
740 percent by the administrative law judge for mitigating
741 circumstances, including good faith efforts to comply prior to
742 or after discovery of the violations by the department. Upon an
743 affirmative finding that the violation was caused by
744 circumstances beyond the reasonable control of the respondent
745 and could not have been prevented by respondent's due diligence,
746 the administrative law judge may further reduce the penalty.

747 (11) Penalties collected pursuant to this section shall be
748 deposited into the Water Quality Assurance Trust Fund or other
749 trust fund designated by statute and shall be used to fund the
750 restoration of ecosystems, or polluted areas of the state, as
751 defined by the department, to their condition before pollution
752 occurred. The Florida Conflict Resolution Consortium may use a
753 portion of the fund to administer the mediation process provided
754 in paragraph (2) (e) and to contract with private mediators for

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755 administrative penalty cases.

756 (12) The purpose of the administrative penalty schedule and
757 process is to provide a more predictable and efficient manner
758 for individuals and businesses to resolve relatively minor
759 environmental disputes. Subsections (3)-(7) may ~~Subsection (3),~~
760 ~~subsection (4), subsection (5), subsection (6), or subsection~~
761 ~~(7) shall~~ not be construed as limiting a state court in the
762 assessment of damages. The administrative penalty schedule does
763 not apply to the judicial imposition of civil penalties in state
764 court as provided in this section.

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

767 403.141 Civil liability; joint and several liability.—

768 (1) A person who ~~Whoever~~ commits a violation specified in
769 s. 403.161(1) is liable to the state for any damage caused to
770 the air, waters, or property, including animal, plant, or
771 aquatic life, of the state and for reasonable costs and expenses
772 of the state in tracing the source of the discharge, in
773 controlling and abating the source and the pollutants, and in
774 restoring the air, waters, and property, including animal,
775 plant, and aquatic life, of the state to their former condition,
776 and furthermore is subject to the judicial imposition of a civil
777 penalty for each offense in an amount of not more than \$15,000
778 ~~\$10,000~~ per offense. However, the court may receive evidence in
779 mitigation. Until a violation is resolved by order or judgment,
780 each day during any portion of which such violation occurs or is
781 not remediated constitutes a separate offense. Nothing herein
782 gives ~~shall give~~ the department the right to bring an action on
783 behalf of any private person.

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

786 403.161 Prohibitions, violation, penalty, intent.—

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

790 (3) A ~~Any~~ person who willfully commits a violation
791 specified in paragraph (1)(a) commits ~~is guilty of~~ a felony of
792 the third degree, punishable as provided in ss. 775.082(3)(e)
793 and 775.083(1)(g) by a fine of not more than \$50,000 or by
794 imprisonment for 5 years, or by both, for each offense. Until a
795 violation is resolved by order or judgment, each day during any
796 portion of which such violation occurs or is not remediated
797 constitutes a separate offense.

798 (4) A ~~Any~~ person who commits a violation specified in
799 paragraph (1)(a) or paragraph (1)(b) due to reckless
800 indifference or gross careless disregard commits ~~is guilty of~~ a
801 misdemeanor of the second degree, punishable as provided in ss.
802 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
803 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each
804 offense.

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

811 Section 17. Paragraph (a) of subsection (6) of section
812 403.413, Florida Statutes, is amended to read:

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813 403.413 Florida Litter Law.—

814 (6) PENALTIES; ENFORCEMENT.—

815 (a) Any person who dumps litter in violation of subsection
816 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
817 feet in volume and not for commercial purposes commits ~~is guilty~~
818 ~~of~~ a noncriminal infraction, punishable by a civil penalty of
819 \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid
820 Waste Management Trust Fund to be used for the solid waste
821 management grant program pursuant to s. 403.7095. In addition,
822 the court may require the violator to pick up litter or perform
823 other labor commensurate with the offense committed.

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

826 403.7234 Small quantity generator notification and
827 verification program.—

828 (5) Any small quantity generator who does not comply with
829 the requirements of subsection (4) and who has received a
830 notification and survey in person or through one certified
831 letter from the county is subject to a fine of between \$75 ~~\$50~~
832 and \$150 ~~\$100~~ per day for a maximum of 100 days. The county may
833 collect such fines and deposit them in its general revenue fund.
834 Fines collected by the county shall be used to carry out the
835 notification and verification procedure established in this
836 section. If there are excess funds after the notification and
837 verification procedures have been completed, such funds shall be
838 used for hazardous and solid waste management purposes only.

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

841 403.726 Abatement of imminent hazard caused by hazardous

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842 substance.—

843 (3) An imminent hazard exists if any hazardous substance
844 creates an immediate and substantial danger to human health,
845 safety, or welfare or to the environment. The department may
846 institute action in its own name, using the procedures and
847 remedies of s. 403.121 or s. 403.131, to abate an imminent
848 hazard. However, the department is authorized to recover a civil
849 penalty of not more than \$37,500 ~~\$25,000~~ for each day until a ~~of~~
850 ~~continued~~ violation is resolved by order or judgment. Whenever
851 serious harm to human health, safety, and welfare; the
852 environment; or private or public property may occur prior to
853 completion of an administrative hearing or other formal
854 proceeding that which might be initiated to abate the risk of
855 serious harm, the department may obtain, ex parte, an injunction
856 without paying filing and service fees prior to the filing and
857 service of process.

858 Section 20. Paragraph (a) of subsection (3) of section
859 403.727, Florida Statutes, is amended to read:

860 403.727 Violations; defenses, penalties, and remedies.—

861 (3) Violations of the provisions of this act are punishable
862 as follows:

863 (a) Any person who violates ~~the provisions of~~ this act, the
864 rules or orders of the department, or the conditions of a permit
865 is liable to the state for any damages specified in s. 403.141
866 and for a civil penalty of not more than \$75,000 ~~\$50,000~~ for
867 each day of continued violation or until a violation is resolved
868 by order or judgment, except as otherwise provided herein. The
869 department may revoke any permit issued to the violator. In any
870 action by the department against a small hazardous waste

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871 generator for the improper disposal of hazardous wastes, a
872 rebuttable presumption of improper disposal shall be created if
873 the generator was notified pursuant to s. 403.7234; the
874 generator shall then have the burden of proving that the
875 disposal was proper. If the generator was not so notified, the
876 burden of proving improper disposal shall be placed upon the
877 department.

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

880 403.93345 Coral reef protection.—

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

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

893 (b) For damage totaling more than an area of 1 square meter
894 but less than or equal to an area of 10 square meters, \$450 ~~\$300~~
895 per square meter; with aggravating circumstances, an additional
896 \$450 ~~\$300~~ per square meter; occurring within a state park or
897 aquatic preserve, an additional \$450 ~~\$300~~ per square meter.

898 (c) For damage exceeding an area of 10 square meters,
899 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,

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900 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a
901 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per
902 square meter.

903 (d) For a second violation, the total penalty may be
904 doubled.

905 (e) For a third violation, the total penalty may be
906 tripled.

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

909 (g) The total of penalties levied may not exceed \$375,000
910 ~~\$250,000~~ per occurrence.

911 Section 22. Subsection (5) of s. 823.11, Florida Statutes,
912 is reenacted for the purpose of incorporating the amendment made
913 by this act to s. 376.16, Florida Statutes, in a reference
914 thereto.

915 Section 23. Subsection (5) of s. 403.077, subsection (2) of
916 s. 403.131, paragraph (d) of subsection (3) of s. 403.4154, and
917 subsection (5) of s. 403.860, Florida Statutes, are reenacted
918 for the purpose of incorporating the amendment made by this act
919 to s. 403.121, Florida Statutes, in references thereto.

920 Section 24. Subsection (10) of s. 403.708, subsection (7)
921 of s. 403.7191, and s. 403.811, Florida Statutes, are reenacted
922 for the purpose of incorporating the amendment made by this act
923 to s. 403.141, Florida Statutes, in references thereto.

924 Section 25. Subsection (2) of s. 403.7255, Florida
925 Statutes, is reenacted for the purpose of incorporating the
926 amendment made by this act to s. 403.161, Florida Statutes, in a
927 reference thereto.

928 Section 26. Subsection (8) of s. 403.7186, Florida

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929 Statutes, is reenacted for the purpose of incorporating the
930 amendments made by this act to ss. 403.141 and 403.161, Florida
931 Statutes, in references thereto.

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