



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Issue – Natural Resource Damage Assessment**

Sections 376.011 – 376.17 and 376.19 – 376.21, F.S., are known as the “Pollutant Discharge Prevention and Control Act (Act).”<sup>1</sup> In the Act, the Legislature has found that the transfer of pollutants between vessels, between onshore facilities and vessels, between offshore facilities and vessels, and between terminal facilities is a hazardous undertaking, and that spills, discharges, and escapes of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state, and interests deriving livelihood from marine-related activities.<sup>2</sup>

The Legislature acknowledges that extensive damage to the state’s natural resources is the likely result of a pollutant discharge, and that it is essential that the state adequately assess and recover the cost of such damage from responsible parties. Natural resources include coastal waters, wetlands, estuaries, tidal flats, beaches, lands adjoining the seacoasts of the state, and all living things except human beings. It is the state’s goal to recover the costs of restoration from the responsible parties and to restore damaged natural resources to their predischarge condition.<sup>3</sup>

Under section 376.041, F.S., the discharge of pollutants into coastal waters is prohibited. “Pollutants” are defined to include oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof, excluding liquefied petroleum gas.<sup>4</sup> The Department of Environmental Protection (DEP) is directed to recover damages to natural resources resulting from pollutant discharges. Section 376.121, F.S., directs DEP to assess damages to the natural resources using the formula contained with the statute.

A discharge of pollutants in Florida’s coastal waters may also result in a response from the federal government. The federal Oil Pollution Act (OPA) of 1990 streamlined and strengthened the U.S. Environmental Protection Agency’s ability to prevent and respond to catastrophic oil spills. A trust fund (U.S. Oil Spill Liability Trust Fund) financed by a tax on oil is available to clean up spills when the responsible party is incapable or unwilling to clean up the oil spill.<sup>5</sup>

<sup>1</sup> s. 376.011, F.S.

<sup>2</sup> s. 376.021(3)(a) and (b), F.S.

<sup>3</sup> s. 376.121, F.S.

<sup>4</sup> s. 376.031(16), F.S.

<sup>5</sup> <http://www.epa.gov/region5/defs/html/opa.htm>

The statutory formula used by DEP has served DEP well in assessing damages for smaller oil spills where federal trustees do not conduct an assessment. The smaller spills represent the majority of spill incidents in Florida. However, for larger oil spills, DEP and the federal government each conduct a detailed assessment. By performing separate assessments, potential conflicts may result between the two assessments due to DEP using a formula assessment procedure and the federal trustees using a scientifically based assessment procedure which could result in a legal challenge and reduce or threaten potential restoration actions.<sup>6</sup>

### **Effect of Proposed Change**

The bill amends section 376.121, F.S., to allow DEP the option to use the methods for calculating natural resources damages provided in the federal rules implementing the Oil Pollution Act of 1990 as well as methods authorized under current law. The bill will also allow DEP the option to join in with two federal trustees (U.S. National Oceanic and Atmospheric Administration and U.S. Department of Interior) in conducting a single scientific assessment of damages caused by larger coastal oil spills by enabling the state and federal agencies to jointly negotiate with the party responsible for the spill using an identical assessment procedure, and to submit claims to the U.S. Coast Guard National Pollution Funds Center for compensation from the U.S. Oil Spill Liability Trust Fund. In addition, joint assessments will expedite the ability to restore resources damaged by coastal oil spills. The current statutory assessment formula will remain in use for smaller coastal spills which represent the majority of spill incidents in Florida.<sup>7</sup>

#### C. SECTION DIRECTORY:

Section 1. Amends s. 376.121, F.S., to authorize the use of alternative methods for calculating natural resource damage from pollutant discharges.

Section 2. Provides that the act will take effect upon becoming law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

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<sup>6</sup> DEP, Legislative Bill Analysis, Received March 8, 2004

<sup>7</sup> DEP, Legislative Bill Analysis, Received March 8, 2004

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In the event of a large coastal oil spill, the company responsible for the oil spill into Florida coastal waters could have one damage assessment negotiation with federal and state trustees as opposed to negotiating with the trustees separately.

D. FISCAL COMMENTS:           None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect municipal or county government.

2. Other:           None.

B. RULE-MAKING AUTHORITY:           None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DEP Comments: The proposed statutory change will reduce the likelihood of a spillers' challenge to the Florida damage assessment formula in the event of a spill where both the federal trustees and DEP conduct a damage assessment.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 15, 2004, the Environmental Regulation subcommittee recommended for adoption by the Natural Resources committee two amendments:

- Amendment No. 1 – provides the DEP the use of calculating natural resource damages in accordance with federal rules implementing the Oil Pollution Act of 1990.
- Amendment No. 2 – provides the DEP the use of calculating natural resource damages in accordance with federal rules implementing the Oil Pollution Act of 1990 when the DEP is not conducting a cooperative damage assessment with federal agencies.