

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1450

INTRODUCER: Environment and Natural Resources Committee and Senator Gruters

SUBJECT: Environmental Enforcement

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schreiber</u>	<u>Rogers</u>	<u>EN</u>	Fav/CS
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1450 makes numerous changes to the penalties for violating Florida's environmental laws. The bill increases required or maximum environmental penalties in various sections of the Florida Statutes. Most of the changes increase the penalty by 50 percent. Additionally, the bill changes the duration that certain penalties may run, so that, until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.

The bill would have an indeterminate positive impact on the various revenue streams impacted by the bill. Additionally, on February 10th, 2020 the Office of Economic and Demographic Research, Criminal Justice Impact Conference adopted a positive insignificant (increase of 10 or fewer prison beds) impact for the bill as currently drafted. The Florida Department of Corrections noted that there were no new commitments to prison in Fiscal Year 2018-2019 for the affected offenses.

The bill is effective July 1, 2020.

II. Present Situation:

Environmental Violations

The Department of Environmental Protection (DEP) is Florida's lead agency for environmental management and stewardship, implementing many programs to protect the state's air, water, and land.¹ In accordance with the state's numerous environmental laws, the DEP's responsibilities include the compliance and enforcement process.² Violations of Florida's environmental laws can result in damages and administrative, civil, and/or criminal penalties.

Damages

In environmental enforcement, damages should compensate the state for the value of the loss to natural resources caused by the violation.³ The DEP may institute a civil action in court or an administrative proceeding in the Division of Administrative Hearings (DOAH) to recover damages for any injury to the air, waters, or property, including animal, plant, and aquatic life, of the state caused by any violation.⁴ Damages can cover the cost of remediating the damage done to the environment, and/or costs incurred by the state in responding to the damage, such as tracing the source, controlling and abating the source, and restoring the environmental resources to their former condition.⁵

Penalties

In addition to damages, a violator can be liable for penalties. Penalties differ from damages in that they are designed to punish the wrongdoer rather than to address the harm caused by the violation.⁶ In environmental enforcement, penalties should create incentives to bring immediate compliance and curb future violations.⁷

Administrative penalties can be levied directly by the agency or in a proceeding in DOAH.⁸ The formal administrative enforcement process is typically initiated by serving a notice of violation, and is finalized through entry of a consent order or final order.⁹ In most administrative proceedings, the DEP has the final decision.¹⁰ An administrative law judge has the final decision for administrative proceedings involving the Environmental Litigation Reform Act, codified in s. 403.121, F.S., which is the primary statute addressing the DEP's administrative penalties.¹¹ Compared to the judicial process, the administrative process is generally considered less

¹ DEP, *About DEP*, <https://floridadep.gov/about-dep> (last visited February 10, 2020); s. 20.255, F.S.

² See DEP, *Enforcement Manual, Chapter One: DEP Regulatory Enforcement Organization* (2017), available at <https://floridadep.gov/sites/default/files/Chapter%201%20October%202017.pdf> (Last visited February 10, 2020).

³ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

⁴ See s. 403.121, F.S.

⁵ See ss. 403.121 and 403.141, F.S.

⁶ See BLACK'S LAW DICTIONARY 1247 (9th ed. 2009).

⁷ DEP, *Enforcement Manual, Chapter 6: Judicial Process and Remedies, Collections, and Bankruptcies*, 89 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

⁸ See ch. 120, F.S. The administrative process is formalized in the Administrative Procedure Act.

⁹ DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 58 (2014), available at https://floridadep.gov/sites/default/files/chapter5_0.pdf (Last visited February 10, 2020).

¹⁰ *Id.*

¹¹ *Id.* at 58-59, 66-70; Ch. 2001-258, Laws of Fla.

expensive, faster and less time consuming, and more conducive to negotiated settlement.¹² However, if the DEP is seeking immediate injunctive relief, which compels a party to act or stop acting, an order must be obtained from a court.¹³

The DEP must proceed administratively in cases in which the DEP seeks administrative penalties that do not exceed \$10,000 per assessment.¹⁴ The DEP is prohibited from imposing administrative penalties in excess of \$10,000 in a notice of violation.¹⁵ The DEP may not have more than one notice of violation pending against a party unless the violations occurred at a different site or the violations were discovered by the DEP subsequent to the filing of a previous notice of violation.¹⁶

Civil penalties are noncriminal fines that are generally levied by a court, and which agencies may be authorized to impose.¹⁷ The DEP may pursue two forms of action in state court: a petition to enforce an order previously entered through the administrative process, or a complaint for violations of statutes or rules.¹⁸ Under both forms, the DEP may seek injunctive relief, civil penalties, damages, and costs and expenses.¹⁹ For judicially imposed civil penalties, the DEP is authorized to recover up to \$10,000 per offense, with each day during any portion of which a violation occurs constituting a separate offense.²⁰

A court or an administrative law judge may receive evidence in mitigation, which may result in the decrease or elimination of penalties.²¹

Criminal penalties can include jail/prison time, a criminal fine, or both. Florida law imposes criminal penalties for certain violations of environmental law.²² Punishments for such violations may vary based on standards of intent, such as willful, reckless indifference, or gross careless disregard.²³

This present situation describes the DEP's general authority to levy penalties, largely pursuant to ch. 403, F.S. the DEP derives enforcement authority from several different chapters of Florida law based on subject matter, so the DEP has additional enforcement authority for programs not covered in ch. 403, F.S. Additionally, the Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief

¹² DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 59 (2014).

¹³ *Id.* at 59-60.

¹⁴ Section 403.121(2)(b), F.S.; DEP, *Enforcement Manual, Chapter Five: The Administrative Process and Remedies*, 66-67 (2014). This requirement does not apply to underground injection, hazardous waste, or asbestos programs.

¹⁵ Section 403.121(2)(b), F.S.

¹⁶ *Id.*

¹⁷ The Environmental Litigation Reform Act allows DEP to seek civil penalties of up to \$10,000 through the administrative process for most environmental violations. The Act may not be used if penalties exceed \$10,000.

¹⁸ DEP, *Enforcement Manual, Chapter Six: Judicial Process and Remedies, Collections, and Bankruptcies*, 86 (2014), available at <https://floridadep.gov/sites/default/files/chapter6.pdf> (Last visited February 10, 2020).

¹⁹ *Id.*

²⁰ Section 403.121(1)(b), F.S.

²¹ Section 403.121, F.S.

²² Section 403.161, F.S.

²³ *Id.*

against the government entity charged with enforcing environmental laws or the violator of the laws.²⁴

Dredge and Fill Permitting Program

In 2018, the Legislature authorized the DEP to assume responsibility for the federal dredge and fill permitting program under the Clean Water Act, to regulate the discharge of dredged or fill material into Florida's navigable waters.²⁵ Currently, in Florida, the program is jointly implemented by the United States Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE).²⁶ Assumption of the dredge and fill permitting program requires EPA approval. The DEP may adopt any federal requirements, criteria, or regulations necessary to obtain assumption.²⁷ Prior to assuming the program, the DEP must submit various materials to the EPA, including a complete program description, a memorandum of understanding between the state and EPA, a memorandum of understanding between the state and USACE, copies of all applicable statutes and regulations, and more.²⁸ The DEP is still in the process of developing the elements of the program for submission to the EPA.

Regarding enforcement authority, federal regulations require the state to have authority to carry out certain enforcement actions. For example, to assume the program, the DEP must have authority to seek criminal fines of at least \$5,000 per violation against any person who:

- Knowingly makes false statements or representation in any document required under the Clean Water Act, federal regulations, or the state program; or
- Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit.²⁹

The approved maximum criminal fine must be assessable for each violation and, if the violation is continuous, must be assessable in that maximum amount for each day of violation.³⁰ The burden of proof and degree of knowledge or intent required under state law for establishing violations may not be greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action under the Clean Water Act.³¹

Florida law provides that it is a violation of part IV of ch. 373, F.S., and ch. 403, F.S., to:

- Knowingly make any false statement or representation in documents required by state law; or
- Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required by state law, rule, or permit.³²

²⁴ Section 403.412, F.S.

²⁵ Chapter 2018-88, Laws of Fla.; s. 373.4146, F.S.; 33 U.S.C. s. 1344(g).

²⁶ 33 U.S.C. s. 1344(a) and (b).

²⁷ Section 373.4146(2) and (5), F.S.

²⁸ 40 C.F.R. ss. 233.10-233.16.

²⁹ 40 C.F.R. s. 233.41(a)(3)(iii).

³⁰ 40 C.F.R. s. 233.41(b)(1).

³¹ 40 C.F.R. s. 233.41(b)(2).

³² Sections 373.430(1)(c) and (5) and 403.161(1)(c) and (5), F.S.

The criminal penalties for these violations are fines of up to \$10,000, 6 months in jail, or both.³³ However, the penalty provisions in Florida law apply to “[a]ny person who willfully” commits the violations.³⁴ This application of the “willfully” standard of intent in the state penalties is inconsistent with the requirements in the federal regulations, which do not contain such a standard.

III. Effect of Proposed Changes:

Sections 1 through 21 amend sections of the Florida Statutes containing various penalties for violations of environmental laws. In general, the bill increases the required or maximum penalties in the provisions listed below. In most cases, the penalties are increased by 50 percent.

Several places in existing law impose a penalty for each offense, with each day during which a violation occurs constituting a separate offense. The bill changes that standard to: each day during which a violation occurs or is not remediated,³⁵ until a violation is resolved by order or judgment. This standard is changed in several sections and created in others.

The table below summarizes existing penalties and the penalties as revised by the bill. All penalties are levied by the Department of Environmental Protection (DEP) unless otherwise specified.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
161.054 (1), F.S.	Violating statutes, rules or orders regarding coastal construction	An administrative fine for each offense of up to \$10,000. Each day during any portion of which a violation occurs constitutes a separate offense.	An administrative fine for each offense of up to \$15,000. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
258.397 (7), F.S.	Violating a statute or rules regarding Biscayne Bay Aquatic Preserve	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day.	Authorizes the Department of Legal Affairs to bring an action for civil penalties of \$7,500 per day. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not

³³ Sections 373.403(5) and 403.161(5), F.S.

³⁴ *Id.*

³⁵ The word “remediation” can refer to a large range of activities and timescales. In environmental law, remediation is generally described as restoring land, water, or air to its former state following some harm or pollution; *see* BLACK’S LAW DICTIONARY 1407 (9th ed. 2009).

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
			remediated constitutes a separate offense.
258.46, F.S.	Violating the Florida Aquatic Preserve Act or related rules	A civil penalty of not less than \$500 per day and not more than \$5,000 per day of a violation.	A civil penalty of not less than \$750 per day and not more than \$7,500 per day of a violation. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
373.129 (5), F.S.	Violating ch. 373, F.S., relating to water resources	Authorizes the DEP, any water management district, any local board, or certain local governments ³⁶ to recover a civil penalty for each offense, in an amount not to exceed \$10,000 per offense. Each date during which a violation occurs constitutes a separate offense.	Authorizes the DEP, any water management district, any local board, or certain local governments to recover a civil penalty for each offense, in an amount not to exceed \$15,000 per offense. Until a violation is resolved by order or judgment, each date during any portion of which a violation occurs or is not remediated constitutes a separate offense.
373.209 (3)(b), F.S.	Violating a statute regarding artesian wells	A civil penalty of \$100 per day for each day of a violation and each act of a violation.	A civil penalty of \$150 per day for each day of a violation and each act of a violation.
373.430 (3), F.S.	Violating statutes regarding surface waters by willfully causing pollution	A fine of not more than \$50,000 or imprisonment for 5 years, or both, for each offense. Each day during any portion of which a violation occurs constitutes a separate offense.	A fine of not more than \$50,000 or imprisonment for 5 years, or both, for each offense. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.

³⁶ Section 373.103(8), F.S. Under certain circumstances, DEP may authorize a water management district to delegate to a local government by rule or agreement the power and duty to administer and enforce any of the statutes, rules, or regulations relating to stormwater permitting or surface water management which the district is authorized or required to administer.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
373.430 (4) and (5), F.S.	Violating statutes regarding surface waters by causing pollution due to reckless indifference or gross careless disregard	<p>A fine of not more than \$5,000 or 60 days in jail, or both, for each offense: causing certain pollution.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>	<p>A fine of not more than \$10,000 or 60 days in jail, or both, for each offense: causing certain pollution; failing to obtain any permit; or violating or failing to comply with any rule, regulation, order, or permit.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>
376.065 (5)(a) and (e), F.S.	Violating a statute regarding terminal facility certifications	<p>A civil penalty of \$500 for any violation of the section or a certification.</p> <p>A civil penalty of \$500 imposed by a county court if commission of the infraction is proved.</p>	<p>A civil penalty of \$750 for any violation of the section or a certification.</p> <p>A civil penalty of \$750 imposed by a county court if commission of the infraction is proved.</p>
376.071 (2)(a) and (e), F.S.	Violations regarding discharge contingency plans for vessels	<p>A civil penalty of \$5,000 for each infraction.</p> <p>A civil penalty of \$5,000 imposed by a county court if commission of the infraction is proved.</p>	<p>A civil penalty of \$7,500 for each infraction.</p> <p>A civil penalty of \$7,500 imposed by a county court if commission of the infraction is proved.</p>
376.16 (1), F.S.	Violating the Pollutant Discharge Prevention and Control Act or the DEP rules or orders	<p>A civil penalty of up to \$50,000 per violation per day.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A civil penalty of up to \$75,000 per violation per day.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
376.16 (2), (3), (7), and (8), F.S.	Violating the Pollutant Discharge Prevention and Control Act or the DEP rules or orders	<p>In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p>	<p>In addition to the penalty in subsection (1), for persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<ul style="list-style-type: none"> • Gasoline/diesel over 5 gallons - a civil penalty of \$500 for the second discharge and \$1,000 for each subsequent discharge within a 12-month period. • Other pollutants - a civil penalty of \$2,500 for the second discharge and \$5,000 for each subsequent discharge within a 12-month period. <p>For persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$50 for each discharge subsequent to the first. • Other pollutants equal to or less than 5 gallons - a civil penalty of \$100 for each discharge subsequent to the first. <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$500 for the second discharge of gasoline/diesel and up to \$1,000 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$5,000 for the second discharge of other pollutants and up to \$10,000 for each subsequent discharge within a 12-month period.</p>	<ul style="list-style-type: none"> • Gasoline/diesel over 5 gallons - a civil penalty of \$750 for the second discharge and \$1,500 for each subsequent discharge within a 12-month period. • Other pollutants - a civil penalty of \$3,750 for the second discharge and \$7,500 for each subsequent discharge within a 12-month period. <p>For persons responsible for two or more discharges within a 12-month period at the same facility, the statute provides the following penalties:</p> <ul style="list-style-type: none"> • Gasoline/diesel equal to or less than 5 gallons - a civil penalty of \$75 for each discharge subsequent to the first; • Other pollutants equal to or less than 5 gallons - a civil penalty of \$150 for each discharge subsequent to the first. <p>Authorizes the county court to impose the following civil penalties if the commission of an infraction is proved: up to \$750 for the second discharge of gasoline/diesel and up to \$1,500 for each subsequent discharge of gasoline/diesel within a 12-month period; up to \$7,500 for the second discharge of other pollutants and up to \$15,000 for each subsequent discharge within a 12-month period.</p>
376.25 (6)(a), F.S.	Violating a statute regarding	A civil penalty of not more than \$50,000 for each violation.	A civil penalty of not more than \$75,000 for each violation.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
	gambling vessels		Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
377.37 (1)(a), F.S.	Violating statutory provisions, rules, orders or permits regarding oil and gas resources	A civil penalty of not more than \$10,000 for each offense. Each day during any portion of which a violation occurs constitutes a separate offense.	A civil penalty of not more than \$15,000 for each offense. Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
378.211 (2), F.S.	Violating statutes, rules, or orders regarding land reclamation	A civil penalty of \$100 per violation of a minor or technical nature; \$1,000 per major violation by an operator on which a penalty has not been imposed during the 5 previous years; and \$5,000 per major violation not otherwise covered. Each day or any portion thereof in which a violation continues constitutes a separate violation. ³⁷	A civil penalty of \$150 per violation of a minor or technical nature; \$1,500 per major violation by an operator on which a penalty has not been imposed during the 5 previous years; and \$7,500 per major violation not otherwise covered. Until a violation is resolved by order or judgment, each day or any portion thereof in which a violation continues or is not remediated constitutes a separate violation.
403.086 (2), F.S.	Violating orders regarding sanitary sewage disposal	A civil penalty of \$500 for each 24-hour day or fraction thereof that the failure is allowed to continue.	A civil penalty of \$750 for each 24-hour day or fraction thereof that the failure is allowed to continue.
403.121 (1)(b), F.S.	Violating ch. 403, F.S., regarding environmental control	For judicial remedies - authorizes the DEP to judicially pursue and recover a civil penalty of not more than \$10,000 per offense.	For judicial remedies - authorizes the DEP to judicially pursue and recover a civil penalty of not more than \$15,000 per offense.

³⁷ Section 378.211(4), F.S. These civil penalties do not begin to accrue until the expiration of a specified time for initiating corrective action, set forth in a written notice of violation issued by DEP.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		Each day during any portion of which a violation occurs constitutes a separate offense.	Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.
403.121 (2)(b) and (g) F.S.	Violating ch. 403, F.S., regarding environmental control	<p>For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) the DEP must proceed administratively when seeking administrative penalties not exceeding \$10,000 per assessment.</p> <p>The DEP may not impose penalties in excess of \$10,000 in a notice of violation.</p> <p>The DEP retains the authority to judicially pursue penalties in excess of \$10,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$10,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$10,000 in penalties may be settled in the court action for less than \$10,000.</p>	<p>For administrative remedies - (except for violations involving hazardous wastes, asbestos, or underground injection) the DEP must proceed administratively when seeking administrative penalties not exceeding \$50,000 per assessment.</p> <p>The DEP may not impose penalties in excess of \$50,000 in a notice of violation.</p> <p>The DEP retains the authority to judicially pursue penalties in excess of \$50,000 for violations not included in the penalty schedule, or for multiple or multiday violations alleged to exceed a total of \$50,000.</p> <p>Any case filed in state court because it is alleged to exceed a total of \$50,000 in penalties may be settled in the court action for less than \$50,000.</p>
403.121 (3)(a), F.S. ³⁸	Administrative penalty schedule: violations regarding drinking water contamination	\$2,000 for a Maximum Containment Level violation; plus \$1,000 for a primary, inorganic, organic, or radiological Maximum Contaminant Level or fecal coliform bacteria violation; plus \$1,000 if the violation occurs at a community water system; plus \$1,000 if any Maximum	\$3,000 for a Maximum Containment Level violation; plus \$1,500 for a primary, inorganic, organic, or radiological Maximum Contaminant Level or fecal coliform bacteria violation; plus \$1,500 if the violation occurs at a community water system; plus \$1,500 if any Maximum

³⁸ Section 403.121(3), F.S. The administrative penalties in this subsection do not apply to hazardous waste, asbestos, or underground injection.

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>Contaminant Level is exceeded by more than 100 percent.</p> <p>\$3,000 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.</p>	<p>Contaminant Level is exceeded by more than 100 percent.</p> <p>\$4,500 for failure to obtain a clearance letter before placing an ineligible drinking water system into service.</p>
<p>403.121 (3)(b), F.S.</p>	<p>Administrative penalty schedule: violations regarding wastewater</p>	<p>\$1,000 for failure to obtain a required wastewater permit (other than a permit for surface water discharge).</p> <p>\$2,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface water or groundwater quality violation).</p> <p>\$5,000 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation.</p>	<p>\$1,500 for failure to obtain a required wastewater permit (other than a permit for surface water discharge).</p> <p>\$3,000 for an unlawful discharge or exceedance resulting in a domestic or industrial wastewater violation (not involving a surface water or groundwater quality violation).</p> <p>\$7,500 for an unlawful discharge or exceedance resulting in a surface water or groundwater quality violation.</p>
<p>403.121 (3)(c), F.S.</p>	<p>Administrative penalty schedule: violations regarding dredge and fill or stormwater</p>	<p>\$1,000 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$2,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water; plus \$1,000 if the area dredged or filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,000 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$3,000 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater</p>	<p>\$1,500 for an unlawful dredging, filling, or construction of a stormwater management system; plus \$3,000 if the dredging or filling occurs in an aquatic preserve, an Outstanding Florida water, a conservation easement, or a Class I or Class II surface water; plus \$1,500 if the area dredged or filled is greater than .25 acres but less than or equal to .5 acres; plus \$1,500 if the area dredged or filled is greater than .5 acres but less than or equal to 1 acre.</p> <p>\$4,500 for failure to complete required mitigation, record a required conservation easement, or for a water quality violation resulting from dredging and filling activities, stormwater</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>construction activities or failure of a stormwater treatment facility.</p> <p>\$2,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater treatment system.</p> <p>\$5,000 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>	<p>construction activities or failure of a stormwater treatment facility.</p> <p>\$3,000 (stormwater systems serving less than 5 acres) for failure to properly or timely construct a stormwater treatment system.</p> <p>\$7,500 per violation, in addition to the above penalties, for conducting unlawful dredging or filling.</p>
<p>403.121 (3)(d), F.S.</p>	<p>Administrative penalty schedule: violations regarding mangrove trimming</p>	<p>\$5,000 per violation for conducting mangrove trimming or alterations without a permit.</p>	<p>\$7,500 per violation for conducting mangrove trimming or alterations without a permit.</p>
<p>403.121 (3)(e), F.S.</p>	<p>Administrative penalty schedule: violations regarding solid waste</p>	<p>\$2,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,000 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,000 if the waste contains certain amounts of PCB, untreated biomedical waste, friable asbestos, used oil, or lead acid batteries.</p> <p>\$3,000 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$2,000 for failure to construct or maintain a required stormwater management system.</p>	<p>\$3,000 for unlawful disposal or storage of solid waste; plus \$1,000 for Class I or III or construction and demolition debris in excess of 20 cubic yards; plus \$1,500 if the waste is disposed of or stored in a waterbody or within 500 feet of a potable water well; plus \$1,500 if the waste contains certain amounts of PCB, untreated biomedical waste, friable asbestos, used oil, or lead acid batteries.</p> <p>\$4,500 for failure to maintain leachate control, unauthorized burning, failure to have a trained spotter on duty, or failure to provide access control for three consecutive inspections.</p> <p>\$3,000 for failure to construct or maintain a required stormwater management system.</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
403.121 (3)(f), F.S.	Administrative penalty schedule: violations regarding air emissions	\$1,000 for an unlawful air emission or exceedance; plus \$3,000 for emissions from the major source of the violating pollutant; plus \$1,000 if over 150% of the allowable level.	\$1,500 for an unlawful air emission or exceedance; plus \$4,500 for emissions from the major source of the violating pollutant; plus \$1,500 if over 150% of the allowable level.
403.121 (3)(g), F.S.	Administrative penalty schedule: violations regarding storage tank system and petroleum contamination	<p>\$5,000 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued.</p> <p>\$3,000 for failure to timely upgrade a storage tank system.</p> <p>\$2,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or remediate petroleum contamination, or failure to properly install a storage tank system.</p> <p>\$1,000 for failure to properly operate, maintain, or close a storage tank system.</p>	<p>\$7,500 for failure to empty a damaged storage system as necessary to ensure a release does not occur until repairs are completed, when a release has occurred, failure to timely recover free product, or failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued.</p> <p>\$4,500 for failure to timely upgrade a storage tank system.</p> <p>\$3,000 for failure to conduct or maintain required release detection, failure to timely investigate a suspected release, depositing motor fuel into an unregistered storage tank system, failure to timely assess or remediate petroleum contamination, or failure to properly install a storage tank system.</p> <p>\$1,500 for failure to properly operate, maintain, or close a storage tank system.</p>
403.121 (4), F.S.	Violating ch. 403, F.S., regarding environmental control	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> • \$5,000 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$4,000 for failure to install, maintain, or use a required 	<p>In administrative proceedings, in addition to penalties assessed under subsection (3):</p> <ul style="list-style-type: none"> • \$7,500 for failure to satisfy financial responsibility requirements or for oil and gas pollution violations. • \$6,000 for failure to install, maintain, or use a required

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>pollution control system or device.</p> <ul style="list-style-type: none"> • \$3,000 for failure to obtain a required permit before construction or modification. • \$2,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,000 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to the DEP. • \$500 for failure to prepare, submit, maintain, or use required reports or documentation. 	<p>pollution control system or device.</p> <ul style="list-style-type: none"> • \$4,500 for failure to obtain a required permit before construction or modification. • \$3,000 for failure to conduct required monitoring or testing, conduct required release detection, or construct in compliance with a permit. • \$1,500 for failure to maintain required staff to respond to emergencies, failure to conduct required training, failure to prepare, maintain, or update required contingency plans, failure to adequately respond to emergencies to bring an emergency situation under control, or failure to submit required notification to the DEP. • \$750 for failure to prepare, submit, maintain, or use required reports or documentation.
<p>403.121 (5), (7), (8), and (9), F.S.</p>	<p>Violating ch. 403, F.S., regarding environmental control</p>	<p>A penalty of \$500 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator’s history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$2,000 must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is</p>	<p>A penalty of \$1,000 for failure to comply with any other department regulatory statute or rule.</p> <p>A violator’s history of noncompliance for any previous violation found in an executed consent order finding violation, or resulting in a final order or judgment involving the imposition of \$3,000 must be taken into consideration in a manner specified in statute.</p> <p>The total administrative penalty, including direct economic benefit gained by the violator that is</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		<p>added to the scheduled administrative penalty, may not exceed \$10,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$5,000, unless there is a history of noncompliance, the economic benefit exceeds \$5,000, or there are multiday violations. Total administrative penalties may not exceed \$10,000 per assessment for all violations attributable to a specific person in a notice of violation.</p>	<p>added to the scheduled administrative penalty, may not exceed \$15,000.</p> <p>The administrative penalties for a particular violation that are assessed against any one violator may not exceed \$7,500, unless there is a history of noncompliance, the economic benefit exceeds \$7,500, or there are multiday violations. Total administrative penalties may not exceed \$50,000 per assessment for all violations attributable to a specific person in a notice of violation.</p>
<p>403.141 (1), F.S.</p>	<p>Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts</p>	<p>A civil penalty for each offense in an amount not to exceed \$10,000.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p>	<p>A civil penalty for each offense in an amount not to exceed \$15,000.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p>
<p>403.161 (3) and (5), F.S.</p>	<p>Violating ch. 403, F.S., regarding environmental control, by willfully causing pollution</p>	<p>A fine of not more than \$50,000 or imprisonment for five years, or both, for each offense.</p> <p>Each day during any portion of which a violation occurs constitutes a separate offense.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for willfully committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>	<p>A fine of not more than \$50,000 or imprisonment for five years, or both, for each offense.</p> <p>Until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.</p> <p>A fine of not more than \$10,000, 6 months in jail, or both for committing the following violation: knowingly falsifying required documentation or falsifying, tampering with, or rendering inaccurate required monitoring devices or methods.</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
403.161 (4), F.S.	Violating ch. 403, F.S., regarding environmental control, by committing prohibited acts specified in the statute	A violation causing pollution due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$5,000 or 60 days in jail, or both, for each offense.	A violation causing pollution; failure to obtain a permit required under Ch. 403, F.S., or rules; or violating any rule, order, permit or certification adopted or issued by the DEP due to reckless indifference or gross careless disregard is punishable by a fine of not more than \$10,000 or 60 days in jail, or both, for each offense.
403.413 (6)(a), F.S.	Dumping litter	A civil penalty of \$100 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.	A civil penalty of \$150 for dumping litter (not for commercial purposes) not exceeding 15 pounds or 27 cubic feet.
403.7234 (5), F.S.	Violations involving small quantity generators	A fine of between \$50 and \$100 per day for a maximum of 100 days for a noncompliant small quantity generator.	A fine of between \$75 and \$150 per day for a maximum of 100 days for a noncompliant small quantity generator.
403.726 (3), F.S.	Violations regarding hazardous waste creating an imminent hazard	Authorizes the DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$25,000 for each day of continued violation.	Authorizes the DEP to institute action to abate an imminent hazard and may recover a civil penalty of not more than \$37,500 for each day until a violation is resolved by order or judgment.
403.727 (3)(a), F.S.	Violations regarding hazardous waste	A civil penalty of not more than \$50,000 for each day of continued violation.	A civil penalty of not more than \$75,000 for each day of continued violation or until a violation is resolved by order or judgment.
403.93345 (8)(a)-(c) and (g), F.S.	Civil penalty schedule: violating the Florida Coral Reef Protection Act	<p>Damage to a coral reef less than or equal to 1 square meter: \$150; additional \$150 with aggravating circumstances; additional \$150 if occurring within a state park or aquatic preserve.</p> <p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$300 per square meter; additional \$300 per square meter with aggravating circumstances; additional \$300 per square meter</p>	<p>Damage to a coral reef less than or equal to 1 square meter: \$225; additional \$225 with aggravating circumstances; additional \$225 if occurring within a state park or aquatic preserve.</p> <p>Damage to a coral reef of more than 1 square meter but less than or equal to 10 square meters: \$450 per square meter; additional \$450 per square meter with aggravating circumstances; additional \$450 per square meter</p>

Florida Statutes	Violations	Existing Penalties	Changes in SB 1450
		if occurring within a state park or aquatic preserve. Damage exceeding an area of 10 square meters: \$1,000 per square meter; additional \$1,000 per square meter with aggravating circumstances; additional \$1,000 per square meter if occurring within a state park or aquatic preserve. The total penalties levied may not exceed \$250,000 per occurrence.	if occurring within a state park or aquatic preserve. Damage exceeding an area of 10 square meters: \$1,500 per square meter; additional \$1,500 per square meter with aggravating circumstances; additional \$1,500 per square meter if occurring within a state park or aquatic preserve. The total penalties levied may not exceed \$375,000 per occurrence.

Sections 22 through 26 reenact ss. 823.11(5); 403.077(5); 403.131(2); 403.4154(3)(d); 403.860(5); 403.708(10); 403.7191(7); 403.811; 403.7255(2); and 403.7186(8), F.S. This reenactment is done for the purpose of incorporating certain amendments made by the bill, as the reenacted provisions reference sections of law that are amended by the bill.

Section 27 states that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The vagueness doctrine was developed to ensure compliance with the Due Process Clause in the Fifth Amendment of the United States Constitution, and Florida’s

Constitution includes a similar due process guarantee.³⁹ The vagueness doctrine provides that a statute must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, and it must provide explicit standards for those who apply them to avoid arbitrary and discriminatory enforcement.⁴⁰ A statute is void for vagueness when, because of its imprecision, it fails to give an adequate notice of what conduct is prohibited.⁴¹ Thus, it invites arbitrary and discriminatory enforcement.⁴² A statute is not void for vagueness if the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.⁴³ However, the Supreme Court has indicated that a statute giving fair notice of the prohibited conduct can still be void for vagueness if it lends itself to arbitrary enforcement.⁴⁴ The need for definiteness is even greater when a law imposes criminal penalties on individual behavior or implicates constitutionally protected rights.⁴⁵

In several places in the bill, a penalty standard is revised or added such that “until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.” In such instances, the meaning of the word “remediated” is crucial for determining the number of separate offenses. This term is undefined in the statutes amended by the bill. This condition is applied to criminal penalties in addition to administrative and civil penalties.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases numerous penalties for violations of environmental laws. In some instances, the bill also expands the potential time period when each passing day may constitute a separate offense. Overall, the bill increases the penalties that the private sector must pay for violations of environmental laws.

C. Government Sector Impact:

The bill increases the amounts of numerous penalties. If imposed, the funds from such penalties would increase revenue to the state. Therefore, the bill may have a positive, indeterminate impact on the government sector.

³⁹ *Simmons v. State*, 944 So.2d 317, 324 (Fla. 2006).

⁴⁰ *Florida Ass'n of Professional Lobbyists, Inc. v. Div. of Legislative Info. Services of the Florida Office of Legislative Services*, 525 F.3d 1073, 1078 (11th Cir. 2008) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

⁴¹ *Sult v. State*, 906 So.2d 1013, 1020 (Fla. 2005).

⁴² *Id.*

⁴³ *Simmons*, 944 at 324.

⁴⁴ *Id.*; see *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

⁴⁵ *Simmons*, 944 at 324.

On February 10th, 2020 the Office of Economic and Demographic Research, Criminal Justice Impact Conference adopted a positive insignificant (increase of 10 or fewer prison beds) impact for the bill as currently drafted. The Florida Department of Corrections noted that there were no new commitments to prison in Fiscal Year 2018-2019 for the affected offenses.⁴⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

In sections of the bill containing “[u]ntil a violation is resolved by order or judgment, each day during any portion of which such violation occurs or is not remediated constitutes a separate offense,” or similar language, a definition for the word “remediated” is recommended.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 161.054, 258.397, 258.46, 373.129, 373.209, 373.430, 376.065, 376.071, 376.16, 376.25, 377.37, 378.211, 403.086, 403.121, 403.141, 403.161, 403.413, 403.7234, 403.726, 403.727, and 403.93345.

This bill reenacts parts or all of the following sections of the Florida Statutes: 823.11, 403.077, 403.131, 403.4154, 403.860, 403.708, 403.7191, 403.811, 403.7255, and 403.7186.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on January 27, 2020:

- Removes the “willfully” standard of intent from applying to criminal penalties in two sections of Florida’s environmental statutes. The penalties apply to violations of knowingly falsifying documents or tampering with required monitoring. The DEP’s authority to seek criminal fines for such falsification or tampering is required by the federal regulations for state assumption of the 404 dredge and fill program. Applying a “willfully” standard to the penalties is not consistent with the federal regulations, so the bill removes the standard.
- Revises the title of the bill to more accurately describe the contents of the bill.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁴⁶ Office of Economic and Demographic Research (EDR) Criminal Justice Impact Conference Results for February 10, 2020 <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1450.pdf> (Last visited February 10, 2020).