

By Senator Gruters

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1 A bill to be entitled
2 An act relating to environmental enforcement; amending
3 ss. 161.054, 258.397, 258.46, 373.129, 373.209,
4 373.430, 376.065, 376.071, 376.16, 376.25, 377.37,
5 378.211, 403.086, 403.121, 403.141, 403.161, 403.413,
6 403.7234, 403.726, 403.727, and 403.93345, F.S.;
7 increasing the civil penalties for violations of
8 certain provisions relating to beach and shore
9 construction, the Biscayne Bay Aquatic Preserve,
10 aquatic preserves, the state water resource plan,
11 artesian wells, pollution, operating a terminal
12 facility without discharge prevention and response
13 certificates, discharge contingency plans for vessels,
14 the Pollutant Discharge Prevention and Control Act,
15 the Clean Ocean Act, the pollution of surface and
16 ground waters, the regulation of oil and gas
17 resources, the Phosphate Land Reclamation Act, sewage
18 disposal facilities, pollution control, reasonable
19 costs and expenses for pollution releases, necessary
20 permits, dumping litter, small quantity generators,
21 the abatement of imminent hazards caused by hazardous
22 substances, hazardous waste generators, transporters,
23 or facilities, and coral reef protection,
24 respectively; providing that each day that certain
25 violations are not remediated constitutes a separate
26 offense; making technical changes; reenacting s.
27 823.11(5), F.S., to incorporate the amendment made to
28 s. 376.16, F.S., in a reference thereto; reenacting
29 ss. 403.077(5), 403.131(2), 403.4154(3)(d), and

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30 403.860(5), F.S., to incorporate the amendment made to
31 s. 403.121, F.S., in a reference thereto; reenacting
32 ss. 403.708(10), 403.7191(7), and 403.811, F.S., to
33 incorporate the amendment made to s. 403.141, F.S., in
34 a reference thereto; reenacting s. 403.7255(2), F.S.,
35 to incorporate the amendment made to s. 403.161, F.S.,
36 in a reference thereto; reenacting s. 403.7186(8),
37 F.S., to incorporate the amendment made to ss. 403.141
38 and 403.161, F.S., in references thereto; providing an
39 effective date.
40

41 Be It Enacted by the Legislature of the State of Florida:
42

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

45 161.054 Administrative fines; liability for damage; liens.-

46 (1) In addition to the penalties provided for in ss.
47 161.052, 161.053, and 161.121, any person, firm, corporation, or
48 governmental agency, or agent thereof, refusing to comply with
49 or willfully violating ~~any of the provisions of~~ s. 161.041, s.
50 161.052, or s. 161.053, or any rule or order prescribed by the
51 department thereunder, shall incur a fine for each offense in an
52 amount up to \$15,000 ~~\$10,000~~ to be fixed, imposed, and collected
53 by the department. Until a violation is resolved by order or
54 judgment, each day during any portion of which such violation
55 occurs or is not remediated constitutes a separate offense.

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

58 258.397 Biscayne Bay Aquatic Preserve.-

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59 (7) ENFORCEMENT. ~~The provisions of~~ This section may be
60 enforced in accordance with ~~the provisions of~~ s. 403.412. In
61 addition, the Department of Legal Affairs may ~~is authorized to~~
62 bring an action for civil penalties of \$7,500 ~~\$5,000~~ per day
63 against any person, natural or corporate, who violates ~~the~~
64 ~~provisions of~~ this section or any rule or regulation issued
65 hereunder. Until a violation is resolved by order or judgment,
66 each day during any portion of which such violation occurs or is
67 not remediated constitutes a separate offense. Enforcement of
68 applicable state regulations shall be supplemented by the Miami-
69 Dade County Department of Environmental Resources Management
70 through the creation of a full-time enforcement presence along
71 the Miami River.

72 Section 3. Section 258.46, Florida Statutes, is amended to
73 read:

74 258.46 Enforcement; violations; penalty. ~~The provisions of~~
75 This act may be enforced by the Board of Trustees of the
76 Internal Improvement Trust Fund or in accordance with ~~the~~
77 ~~provisions of~~ s. 403.412. However, any violation by any person,
78 natural or corporate, of ~~the provisions of~~ this act or any rule
79 or regulation issued hereunder is ~~shall be~~ further punishable by
80 a civil penalty of not less than \$750 ~~\$500~~ per day or more than
81 \$7,500 ~~\$5,000~~ per day of such violation. Until a violation is
82 resolved by order or judgment, each day during any portion of
83 which such violation occurs or is not remediated constitutes a
84 separate offense.

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

87 373.129 Maintenance of actions.—The department, the

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88 governing board of any water management district, any local
89 board, or a local government to which authority has been
90 delegated pursuant to s. 373.103(8), is authorized to commence
91 and maintain proper and necessary actions and proceedings in any
92 court of competent jurisdiction for any of the following
93 purposes:

94 (5) To recover a civil penalty for each offense in an
95 amount not to exceed \$15,000 ~~\$10,000~~ per offense. Until a
96 violation is resolved by order or judgment, each date during any
97 portion of which such violation occurs or is not remediated
98 constitutes a separate offense.

99 (a) A civil penalty recovered by a water management
100 district pursuant to this subsection shall be retained and used
101 exclusively by the water management district that collected the
102 money. A civil penalty recovered by the department pursuant to
103 this subsection must be deposited into the Water Quality
104 Assurance Trust Fund established under s. 376.307.

105 (b) A local government that is delegated authority pursuant
106 to s. 373.103(8) may deposit a civil penalty recovered pursuant
107 to this subsection into a local water pollution control program
108 trust fund, notwithstanding ~~the provisions of~~ paragraph (a).
109 However, civil penalties that are deposited in a local water
110 pollution control program trust fund and that are recovered for
111 violations of state water quality standards may be used only to
112 restore water quality in the area that was the subject of the
113 action, and civil penalties that are deposited in a local water
114 pollution control program trust fund and that are recovered for
115 violation of requirements relating to water quantity may be used
116 only to purchase lands and make capital improvements associated

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117 with surface water management, or other purposes consistent with
118 the requirements of this chapter for the management and storage
119 of surface water.

120 (7) To enforce ~~the provisions of~~ part IV of this chapter in
121 the same manner and to the same extent as provided in ss.
122 373.430, 403.121(1) and (2), 403.131, 403.141, and 403.161.

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

125 373.209 Artesian wells; penalties for violation.-

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

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

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

131 The civil penalty may be recovered by the water management board
132 of the water management district in which the well is located or
133 by the department in a suit in a court of competent jurisdiction
134 in the county where the defendant resides, in the county of
135 residence of any defendant if there is more than one defendant,
136 or in the county where the violation took place. The place of
137 suit shall be selected by the board or department, and the suit,
138 by direction of the board or department, shall be instituted and
139 conducted in the name of the board or department by appropriate
140 counsel. The payment of any such damages does not impair or
141 abridge any cause of action which any person may have against
142 the person violating ~~any provision of~~ this section.

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

145 373.430 Prohibitions, violation, penalty, intent.-

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

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

157 (4) A ~~Any~~ person who commits a violation specified in
158 paragraph (1)(a) or paragraph (1)(b) due to reckless
159 indifference or gross careless disregard commits ~~is guilty of~~ a
160 misdemeanor of the second degree, punishable as provided in ss.
161 775.082(4)(b) and 775.083(1)(g), by a fine of not more than
162 \$10,000 ~~\$5,000~~ or 60 days in jail, or by both, for each offense.

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

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

171 376.065 Operation of terminal facility without discharge
172 prevention and response certificate prohibited; penalty.-

173 (5) (a) A person who violates this section or the terms and
174 requirements of such certification commits a noncriminal

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175 infraction. The civil penalty for any such infraction shall be
 176 \$750 ~~\$500~~, except as otherwise provided in this section.

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

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

185 376.071 Discharge contingency plan for vessels.—

186 (2) (a) A master of a vessel that violates subsection (1)
 187 commits a noncriminal infraction and shall be cited for such
 188 infraction. The civil penalty for such an infraction shall be
 189 \$7,500 ~~\$5,000~~, except as otherwise provided in this subsection.

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

196 Section 9. Section 376.16, Florida Statutes, is amended to
 197 read:

198 376.16 Enforcement and penalties.—

199 (1) It is unlawful for any person to violate ~~any provision~~
 200 ~~of~~ ss. 376.011-376.21 or any rule or order of the department
 201 made pursuant to this act. A violation is ~~shall be~~ punishable by
 202 a civil penalty of up to \$75,000 ~~\$50,000~~ per violation per day
 203 to be assessed by the department. Until a violation is resolved

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204 by order or judgment, each day during any portion of which the
205 violation occurs or is not remediated constitutes a separate
206 offense. The penalty provisions of this subsection do ~~shall~~ not
207 apply to any discharge promptly reported and removed by a person
208 responsible, in accordance with the rules and orders of the
209 department, or to any discharge of pollutants equal to or less
210 than 5 gallons.

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

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

222 (b) For discharges of any pollutant other than gasoline or
223 diesel, the civil penalty for a second discharge shall be \$3,750
224 ~~\$2,500~~ and the civil penalty for each subsequent discharge
225 within a 12-month period shall be \$7,500 ~~\$5,000~~, except as
226 otherwise provided in this section.

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

231 (a) For discharges of gasoline or diesel equal to or less
232 than 5 gallons, the civil penalty shall be \$75 ~~\$50~~ for each

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233 discharge subsequent to the first.

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

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

239 (a) Pay the civil penalty;

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

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

244

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

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

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

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

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

258

259 A person cited for an infraction under this section who pays the
260 civil penalty or forfeits the bond has admitted the infraction
261 and waives the right to a hearing on the issue of commission of

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262 the infraction. Such admission may not be used as evidence in
263 any other proceeding.

264 (7) Any person who elects to appear before the county court
265 or who is required to appear waives the limitations of the civil
266 penalties specified in subsection (2). The court, after a
267 hearing, shall make a determination as to whether an infraction
268 has been committed. If the commission of an infraction is
269 proved, the court may impose a civil penalty up to, but not
270 exceeding, \$750 ~~\$500~~ for the second discharge of gasoline or
271 diesel and a civil penalty up to, but not exceeding, \$1,500
272 ~~\$1,000~~ for each subsequent discharge of gasoline or diesel
273 within a 12-month period.

274 (8) Any person who elects to appear before the county court
275 or who is required to appear waives the limitations of the civil
276 penalties specified in subsection (2) or subsection (3). The
277 court, after a hearing, shall make a determination as to whether
278 an infraction has been committed. If the commission of an
279 infraction is proved, the court may impose a civil penalty up
280 to, but not exceeding, \$7,500 ~~\$5,000~~ for the second discharge of
281 pollutants other than gasoline or diesel and a civil penalty up
282 to, but not exceeding, \$15,000 ~~\$10,000~~ for each subsequent
283 discharge of pollutants other than gasoline or diesel within a
284 12-month period.

285 (9) At a hearing under this section, the commission of a
286 charged offense must be proved by the greater weight of the
287 evidence.

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

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

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

301 Section 10. Paragraph (a) of subsection (6) of section
302 376.25, Florida Statutes, is amended to read:

303 376.25 Gambling vessels; registration; required and
304 prohibited releases.—

305 (6) PENALTIES.—

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

311 Section 11. Paragraph (a) of subsection (1) of section
312 377.37, Florida Statutes, is amended to read:

313 377.37 Penalties.—

314 (1) (a) Any person who violates ~~any provision of~~ this law or
315 any rule, regulation, or order of the division made under this
316 chapter or who violates the terms of any permit to drill for or
317 produce oil, gas, or other petroleum products referred to in s.
318 377.242(1) or to store gas in a natural gas storage facility, or
319 any lessee, permitholder, or operator of equipment or facilities

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320 used in the exploration for, drilling for, or production of oil,
 321 gas, or other petroleum products, or storage of gas in a natural
 322 gas storage facility, who refuses inspection by the division as
 323 provided in this chapter, is liable to the state for any damage
 324 caused to the air, waters, or property, including animal, plant,
 325 or aquatic life, of the state and for reasonable costs and
 326 expenses of the state in tracing the source of the discharge, in
 327 controlling and abating the source and the pollutants, and in
 328 restoring the air, waters, and property, including animal,
 329 plant, and aquatic life, of the state. Furthermore, such person,
 330 lessee, permitholder, or operator is subject to the judicial
 331 imposition of a civil penalty in an amount of not more than
 332 \$15,000 ~~\$10,000~~ for each offense. However, the court may receive
 333 evidence in mitigation. Until a violation is resolved by order
 334 or judgment, each day during any portion of which such violation
 335 occurs or is not remediated constitutes a separate offense. This
 336 section does not ~~Nothing herein shall~~ give the department the
 337 right to bring an action on behalf of any private person.

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

340 378.211 Violations; damages; penalties.—

341 (2) The department may institute a civil action in a court
 342 of competent jurisdiction to impose and recover a civil penalty
 343 for violation of this part or of any rule adopted or order
 344 issued pursuant to this part. The penalty may ~~shall~~ not exceed
 345 the following amounts, and the court shall consider evidence in
 346 mitigation:

347 (a) For violations of a minor or technical nature, \$150
 348 ~~\$100~~ per violation.

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

352 (c) For major violations not covered by paragraph (b),
353 \$7,500 ~~\$5,000~~ per violation.

354
355 Subject to ~~the provisions of~~ subsection (4), until a violation
356 is resolved by order or judgment, each day or any portion
357 thereof in which the violation continues or is not remediated
358 shall constitute a separate violation.

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

361 403.086 Sewage disposal facilities; advanced and secondary
362 waste treatment.—

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

370 Section 14. Section 403.121, Florida Statutes, is amended
371 to read:

372 403.121 Enforcement; procedure; remedies.—The department
373 shall have the following judicial and administrative remedies
374 available to it for violations of this chapter, as specified in
375 s. 403.161(1).

376 (1) Judicial remedies:

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

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378 of competent jurisdiction to establish liability and to recover
379 damages for any injury to the air, waters, or property,
380 including animal, plant, and aquatic life, of the state caused
381 by any violation.

382 (b) The department may institute a civil action in a court
383 of competent jurisdiction to impose and to recover a civil
384 penalty for each violation in an amount of not more than \$15,000
385 ~~\$10,000~~ per offense. However, the court may receive evidence in
386 mitigation. Until a violation is resolved by order or judgment,
387 each day during any portion of which such violation occurs or is
388 not remediated constitutes a separate offense.

389 (c) Except as provided in paragraph (2) (c), it is ~~shall~~ not
390 ~~be~~ a defense to, or ground for dismissal of, these judicial
391 remedies for damages and civil penalties that the department has
392 failed to exhaust its administrative remedies, has failed to
393 serve a notice of violation, or has failed to hold an
394 administrative hearing prior to the institution of a civil
395 action.

396 (2) Administrative remedies:

397 (a) The department may institute an administrative
398 proceeding to establish liability and to recover damages for any
399 injury to the air, waters, or property, including animal, plant,
400 or aquatic life, of the state caused by any violation. The
401 department may order that the violator pay a specified sum as
402 damages to the state. Judgment for the amount of damages
403 determined by the department may be entered in any court having
404 jurisdiction thereof and may be enforced as any other judgment.

405 (b) If the department has reason to believe a violation has
406 occurred, it may institute an administrative proceeding to order

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407 the prevention, abatement, or control of the conditions creating
408 the violation or other appropriate corrective action. Except for
409 violations involving hazardous wastes, asbestos, or underground
410 injection, the department shall proceed administratively in all
411 cases in which the department seeks administrative penalties
412 that do not exceed \$50,000 ~~\$10,000~~ per assessment as calculated
413 in accordance with subsections (3), (4), (5), (6), and (7).
414 Pursuant to 42 U.S.C. s. 300g-2, the administrative penalty
415 assessed pursuant to subsection (3), subsection (4), or
416 subsection (5) against a public water system serving a
417 population of more than 10,000 shall be not less than \$1,000 per
418 day per violation. The department may ~~shall~~ not impose
419 administrative penalties in excess of \$50,000 ~~\$10,000~~ in a
420 notice of violation. The department may ~~shall~~ not have more than
421 one notice of violation seeking administrative penalties pending
422 against the same party at the same time unless the violations
423 occurred at a different site or the violations were discovered
424 by the department subsequent to the filing of a previous notice
425 of violation.

426 (c) An administrative proceeding shall be instituted by the
427 department's serving of a written notice of violation upon the
428 alleged violator by certified mail. If the department is unable
429 to effect service by certified mail, the notice of violation may
430 be hand delivered or personally served in accordance with
431 chapter 48. The notice shall specify the ~~provision of the law,~~
432 rule, regulation, permit, certification, or order of the
433 department alleged to be violated and the facts alleged to
434 constitute a violation thereof. An order for corrective action,
435 penalty assessment, or damages may be included with the notice.

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436 When the department is seeking to impose an administrative
437 penalty for any violation by issuing a notice of violation, any
438 corrective action needed to correct the violation or damages
439 caused by the violation must be pursued in the notice of
440 violation or they are waived. However, an ~~no~~ order is not ~~shall~~
441 ~~become~~ effective until after service and an administrative
442 hearing, if requested within 20 days after service. Failure to
443 request an administrative hearing within this time period
444 constitutes ~~shall constitute~~ a waiver thereof, unless the
445 respondent files a written notice with the department within
446 this time period opting out of the administrative process
447 initiated by the department to impose administrative penalties.
448 Any respondent choosing to opt out of the administrative process
449 initiated by the department in an action that seeks the
450 imposition of administrative penalties must file a written
451 notice with the department within 20 days after service of the
452 notice of violation opting out of the administrative process. A
453 respondent's decision to opt out of the administrative process
454 does not preclude the department from initiating a state court
455 action seeking injunctive relief, damages, and the judicial
456 imposition of civil penalties.

457 (d) If a person timely files a petition challenging a
458 notice of violation, that person will thereafter be referred to
459 as the respondent. The hearing requested by the respondent shall
460 be held within 180 days after the department has referred the
461 initial petition to the Division of Administrative Hearings
462 unless the parties agree to a later date. The department has the
463 burden of proving with the preponderance of the evidence that
464 the respondent is responsible for the violation. ~~No~~

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465 Administrative penalties should not be imposed unless the
466 department satisfies that burden. Following the close of the
467 hearing, the administrative law judge shall issue a final order
468 on all matters, including the imposition of an administrative
469 penalty. When the department seeks to enforce that portion of a
470 final order imposing administrative penalties pursuant to s.
471 120.69, the respondent may ~~shall~~ not assert as a defense the
472 inappropriateness of the administrative remedy. The department
473 retains its final-order authority in all administrative actions
474 that do not request the imposition of administrative penalties.

475 (e) After filing a petition requesting a formal hearing in
476 response to a notice of violation in which the department
477 imposes an administrative penalty, a respondent may request that
478 a private mediator be appointed to mediate the dispute by
479 contacting the Florida Conflict Resolution Consortium within 10
480 days after receipt of the initial order from the administrative
481 law judge. The Florida Conflict Resolution Consortium shall pay
482 all of the costs of the mediator and for up to 8 hours of the
483 mediator's time per case at \$150 per hour. Upon notice from the
484 respondent, the Florida Conflict Resolution Consortium shall
485 provide to the respondent a panel of possible mediators from the
486 area in which the hearing on the petition would be heard. The
487 respondent shall select the mediator and notify the Florida
488 Conflict Resolution Consortium of the selection within 15 days
489 of receipt of the proposed panel of mediators. The Florida
490 Conflict Resolution Consortium shall provide all of the
491 administrative support for the mediation process. The mediation
492 must be completed at least 15 days before the final hearing date
493 set by the administrative law judge.

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494 (f) In any administrative proceeding brought by the
495 department, the prevailing party shall recover all costs as
496 provided in ss. 57.041 and 57.071. The costs must be included in
497 the final order. The respondent is the prevailing party when an
498 order is entered awarding no penalties to the department and
499 such order has not been reversed on appeal or the time for
500 seeking judicial review has expired. The respondent is ~~shall be~~
501 entitled to an award of attorney's fees if the administrative
502 law judge determines that the notice of violation issued by the
503 department seeking the imposition of administrative penalties
504 was not substantially justified as defined in s. 57.111(3)(e).
505 An ~~No~~ award of attorney's fees as provided by this subsection
506 may not ~~shall~~ exceed \$15,000.

507 (g) Nothing herein shall be construed as preventing any
508 other legal or administrative action in accordance with law.
509 Nothing in this subsection shall limit the department's
510 authority provided in ss. 403.131, 403.141, and this section to
511 judicially pursue injunctive relief. When the department
512 exercises its authority to judicially pursue injunctive relief,
513 penalties in any amount up to the statutory maximum sought by
514 the department must be pursued as part of the state court action
515 and not by initiating a separate administrative proceeding. The
516 department retains the authority to judicially pursue penalties
517 in excess of \$50,000 ~~\$10,000~~ for violations not specifically
518 included in the administrative penalty schedule, or for multiple
519 or multiday violations alleged to exceed a total of \$50,000
520 ~~\$10,000~~. The department also retains the authority provided in
521 ss. 403.131, 403.141, and this section to judicially pursue
522 injunctive relief and damages, if a notice of violation seeking

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523 the imposition of administrative penalties has not been issued.
524 The department has the authority to enter into a settlement,
525 either before or after initiating a notice of violation, and the
526 settlement may include a penalty amount different from the
527 administrative penalty schedule. Any case filed in state court
528 because it is alleged to exceed a total of \$50,000 ~~\$10,000~~ in
529 penalties may be settled in the court action for less than
530 \$50,000 ~~\$10,000~~.

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

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

537 (a) For a drinking water contamination violation, the
538 department shall assess a penalty of \$3,000 ~~\$2,000~~ for a Maximum
539 Containment Level (MCL) violation; plus \$1,500 ~~\$1,000~~ if the
540 violation is for a primary inorganic, organic, or radiological
541 Maximum Contaminant Level or it is a fecal coliform bacteria
542 violation; plus \$1,500 ~~\$1,000~~ if the violation occurs at a
543 community water system; and plus \$1,500 ~~\$1,000~~ if any Maximum
544 Contaminant Level is exceeded by more than 100 percent. For
545 failure to obtain a clearance letter prior to placing a drinking
546 water system into service when the system would not have been
547 eligible for clearance, the department shall assess a penalty of
548 \$4,500 ~~\$3,000~~.

549 (b) For failure to obtain a required wastewater permit,
550 other than a permit required for surface water discharge, the
551 department shall assess a penalty of \$1,500 ~~\$1,000~~. For a

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552 domestic or industrial wastewater violation not involving a
553 surface water or groundwater quality violation, the department
554 shall assess a penalty of \$3,000 ~~\$2,000~~ for an unpermitted or
555 unauthorized discharge or effluent-limitation exceedance. For an
556 unpermitted or unauthorized discharge or effluent-limitation
557 exceedance that resulted in a surface water or groundwater
558 quality violation, the department shall assess a penalty of
559 \$7,500 ~~\$5,000~~.

560 (c) For a dredge and fill or stormwater violation, the
561 department shall assess a penalty of \$1,500 ~~\$1,000~~ for
562 unpermitted or unauthorized dredging or filling or unauthorized
563 construction of a stormwater management system against the
564 person or persons responsible for the illegal dredging or
565 filling, or unauthorized construction of a stormwater management
566 system plus \$3,000 ~~\$2,000~~ if the dredging or filling occurs in
567 an aquatic preserve, an Outstanding Florida Water, a
568 conservation easement, or a Class I or Class II surface water,
569 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
570 one-quarter acre but less than or equal to one-half acre, and
571 plus \$1,500 ~~\$1,000~~ if the area dredged or filled is greater than
572 one-half acre but less than or equal to one acre. The
573 administrative penalty schedule does ~~shall~~ not apply to a dredge
574 and fill violation if the area dredged or filled exceeds one
575 acre. The department retains the authority to seek the judicial
576 imposition of civil penalties for all dredge and fill violations
577 involving more than one acre. The department shall assess a
578 penalty of \$4,500 ~~\$3,000~~ for the failure to complete required
579 mitigation, failure to record a required conservation easement,
580 or for a water quality violation resulting from dredging or

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581 filling activities, stormwater construction activities or
582 failure of a stormwater treatment facility. For stormwater
583 management systems serving less than 5 acres, the department
584 shall assess a penalty of \$3,000 ~~\$2,000~~ for the failure to
585 properly or timely construct a stormwater management system. In
586 addition to the penalties authorized in this subsection, the
587 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
588 against the contractor or agent of the owner or tenant that
589 conducts unpermitted or unauthorized dredging or filling. For
590 purposes of this paragraph, the preparation or signing of a
591 permit application by a person currently licensed under chapter
592 471 to practice as a professional engineer does ~~shall~~ not make
593 that person an agent of the owner or tenant.

594 (d) For mangrove trimming or alteration violations, the
595 department shall assess a penalty of \$7,500 ~~\$5,000~~ per violation
596 against the contractor or agent of the owner or tenant that
597 conducts mangrove trimming or alteration without a permit as
598 required by s. 403.9328. For purposes of this paragraph, the
599 preparation or signing of a permit application by a person
600 currently licensed under chapter 471 to practice as a
601 professional engineer does ~~shall~~ not make that person an agent
602 of the owner or tenant.

603 (e) For solid waste violations, the department shall assess
604 a penalty of \$3,000 ~~\$2,000~~ for the unpermitted or unauthorized
605 disposal or storage of solid waste; plus \$1,000 if the solid
606 waste is Class I or Class III (excluding yard trash) or if the
607 solid waste is construction and demolition debris in excess of
608 20 cubic yards, plus \$1,500 ~~\$1,000~~ if the waste is disposed of
609 or stored in any natural or artificial body of water or within

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610 500 feet of a potable water well, plus \$1,500 ~~\$1,000~~ if the
 611 waste contains PCB at a concentration of 50 parts per million or
 612 greater; untreated biomedical waste; friable asbestos greater
 613 than 1 cubic meter which is not wetted, bagged, and covered;
 614 used oil greater than 25 gallons; or 10 or more lead acid
 615 batteries. The department shall assess a penalty of \$4,500
 616 ~~\$3,000~~ for failure to properly maintain leachate control;
 617 unauthorized burning; failure to have a trained spotter on duty
 618 at the working face when accepting waste; or failure to provide
 619 access control for three consecutive inspections. The department
 620 shall assess a penalty of \$3,000 ~~\$2,000~~ for failure to construct
 621 or maintain a required stormwater management system.

622 (f) For an air emission violation, the department shall
 623 assess a penalty of \$1,500 ~~\$1,000~~ for an unpermitted or
 624 unauthorized air emission or an air-emission-permit exceedance,
 625 ~~plus \$1,000 if the emission results in an air quality violation,~~
 626 plus \$4,500 ~~\$3,000~~ if the emission was from a major source and
 627 the source was major for the pollutant in violation; plus \$1,500
 628 ~~\$1,000~~ if the emission was more than 150 percent of the
 629 allowable level.

630 (g) For storage tank system and petroleum contamination
 631 violations, the department shall assess a penalty of \$7,500
 632 ~~\$5,000~~ for failure to empty a damaged storage system as
 633 necessary to ensure that a release does not occur until repairs
 634 to the storage system are completed; when a release has occurred
 635 from that storage tank system; for failure to timely recover
 636 free product; or for failure to conduct remediation or
 637 monitoring activities until a no-further-action or site-
 638 rehabilitation completion order has been issued. The department

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639 shall assess a penalty of \$4,500 ~~\$3,000~~ for failure to timely
640 upgrade a storage tank system. The department shall assess a
641 penalty of \$3,000 ~~\$2,000~~ for failure to conduct or maintain
642 required release detection; failure to timely investigate a
643 suspected release from a storage system; depositing motor fuel
644 into an unregistered storage tank system; failure to timely
645 assess or remediate petroleum contamination; or failure to
646 properly install a storage tank system. The department shall
647 assess a penalty of \$1,500 ~~\$1,000~~ for failure to properly
648 operate, maintain, or close a storage tank system.

649 (4) In an administrative proceeding, in addition to the
650 penalties that may be assessed under subsection (3), the
651 department shall assess administrative penalties according to
652 the following schedule:

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

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

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

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

662 (e) For failure to maintain required staff to respond to
663 emergencies; failure to conduct required training; failure to
664 prepare, maintain, or update required contingency plans; failure
665 to adequately respond to emergencies to bring an emergency
666 situation under control; or failure to submit required
667 notification to the department, \$1,500 ~~\$1,000~~.

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

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

677 (6) For each additional day during which a violation
678 occurs, the administrative penalties in subsections ~~subsection~~
679 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be assessed per day
680 per violation.

681 (7) The history of noncompliance of the violator for any
682 previous violation resulting in an executed consent order, but
683 not including a consent order entered into without a finding of
684 violation, or resulting in a final order or judgment after the
685 effective date of this law involving the imposition of \$3,000
686 ~~\$2,000~~ or more in penalties shall be taken into consideration in
687 the following manner:

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

691 (b) Two previous such violations within 5 years prior to
692 the filing of the notice of violation will result in a 50-
693 percent per day increase in the scheduled administrative
694 penalty.

695 (c) Three or more previous such violations within 5 years
696 prior to the filing of the notice of violation will result in a

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697 100-percent per day increase in the scheduled administrative
698 penalty.

699 (8) The direct economic benefit gained by the violator from
700 the violation, where consideration of economic benefit is
701 provided by Florida law or required by federal law as part of a
702 federally delegated or approved program, shall be added to the
703 scheduled administrative penalty. The total administrative
704 penalty, including any economic benefit added to the scheduled
705 administrative penalty, may ~~shall~~ not exceed \$15,000 ~~\$10,000~~.

706 (9) The administrative penalties assessed for any
707 particular violation may ~~shall~~ not exceed \$7,500 ~~\$5,000~~ against
708 any one violator, unless the violator has a history of
709 noncompliance, the economic benefit of the violation as
710 described in subsection (8) exceeds \$7,500 ~~\$5,000~~, or there are
711 multiday violations. The total administrative penalties may
712 ~~shall~~ not exceed \$50,000 ~~\$10,000~~ per assessment for all
713 violations attributable to a specific person in the notice of
714 violation.

715 (10) The administrative law judge may receive evidence in
716 mitigation. The penalties identified in subsections ~~subsection~~
717 (3), ~~subsection~~ (4), and ~~subsection~~ (5) may be reduced up to 50
718 percent by the administrative law judge for mitigating
719 circumstances, including good faith efforts to comply prior to
720 or after discovery of the violations by the department. Upon an
721 affirmative finding that the violation was caused by
722 circumstances beyond the reasonable control of the respondent
723 and could not have been prevented by respondent's due diligence,
724 the administrative law judge may further reduce the penalty.

725 (11) Penalties collected pursuant to this section shall be

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726 deposited into the Water Quality Assurance Trust Fund or other
727 trust fund designated by statute and shall be used to fund the
728 restoration of ecosystems, or polluted areas of the state, as
729 defined by the department, to their condition before pollution
730 occurred. The Florida Conflict Resolution Consortium may use a
731 portion of the fund to administer the mediation process provided
732 in paragraph (2) (e) and to contract with private mediators for
733 administrative penalty cases.

734 (12) The purpose of the administrative penalty schedule and
735 process is to provide a more predictable and efficient manner
736 for individuals and businesses to resolve relatively minor
737 environmental disputes. Subsections (3)-(7) may ~~Subsection (3),~~
738 ~~subsection (4), subsection (5), subsection (6), or subsection~~
739 ~~(7) shall~~ not be construed as limiting a state court in the
740 assessment of damages. The administrative penalty schedule does
741 not apply to the judicial imposition of civil penalties in state
742 court as provided in this section.

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

745 403.141 Civil liability; joint and several liability.-

746 (1) A person who ~~Whoever~~ commits a violation specified in
747 s. 403.161(1) is liable to the state for any damage caused to
748 the air, waters, or property, including animal, plant, or
749 aquatic life, of the state and for reasonable costs and expenses
750 of the state in tracing the source of the discharge, in
751 controlling and abating the source and the pollutants, and in
752 restoring the air, waters, and property, including animal,
753 plant, and aquatic life, of the state to their former condition,
754 and furthermore is subject to the judicial imposition of a civil

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755 penalty for each offense in an amount of not more than \$15,000
756 ~~\$10,000~~ per offense. However, the court may receive evidence in
757 mitigation. Until a violation is resolved by order or judgment,
758 each day during any portion of which such violation occurs or is
759 not remediated constitutes a separate offense. Nothing herein
760 gives ~~shall give~~ the department the right to bring an action on
761 behalf of any private person.

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

764 403.161 Prohibitions, violation, penalty, intent.—

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

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

776 (4) A ~~Any~~ person who commits a violation specified in
777 paragraph (1)(a) or paragraph (1)(b) due to reckless
778 indifference or gross careless disregard commits ~~is guilty of~~ a
779 misdemeanor of the second degree, punishable as provided in ss.
780 775.082(4)(b) and 775.083(1)(g) by a fine of not more than
781 \$10,000 ~~\$5,000~~ or by 60 days in jail, or by both, for each
782 offense.

783 (5) A ~~Any~~ person who willfully commits a violation

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784 specified in paragraph (1)(b) or paragraph (1)(c) commits is
785 ~~guilty of~~ a misdemeanor of the first degree punishable as
786 provided in ss. 775.082(4)(a) and 775.083(1)(g) by a fine of not
787 more than \$10,000 or by 6 months in jail, or by both for each
788 offense.

789 Section 17. Paragraph (a) of subsection (6) of section
790 403.413, Florida Statutes, is amended to read:

791 403.413 Florida Litter Law.—

792 (6) PENALTIES; ENFORCEMENT.—

793 (a) Any person who dumps litter in violation of subsection
794 (4) in an amount not exceeding 15 pounds in weight or 27 cubic
795 feet in volume and not for commercial purposes commits is~~guilty~~
796 ~~of~~ a noncriminal infraction, punishable by a civil penalty of
797 \$150 ~~\$100~~, from which \$50 shall be deposited into the Solid
798 Waste Management Trust Fund to be used for the solid waste
799 management grant program pursuant to s. 403.7095. In addition,
800 the court may require the violator to pick up litter or perform
801 other labor commensurate with the offense committed.

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

804 403.7234 Small quantity generator notification and
805 verification program.—

806 (5) Any small quantity generator who does not comply with
807 the requirements of subsection (4) and who has received a
808 notification and survey in person or through one certified
809 letter from the county is subject to a fine of between \$75 ~~\$50~~
810 and \$150 ~~\$100~~ per day for a maximum of 100 days. The county may
811 collect such fines and deposit them in its general revenue fund.
812 Fines collected by the county shall be used to carry out the

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813 notification and verification procedure established in this
814 section. If there are excess funds after the notification and
815 verification procedures have been completed, such funds shall be
816 used for hazardous and solid waste management purposes only.

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

819 403.726 Abatement of imminent hazard caused by hazardous
820 substance.—

821 (3) An imminent hazard exists if any hazardous substance
822 creates an immediate and substantial danger to human health,
823 safety, or welfare or to the environment. The department may
824 institute action in its own name, using the procedures and
825 remedies of s. 403.121 or s. 403.131, to abate an imminent
826 hazard. However, the department is authorized to recover a civil
827 penalty of not more than \$37,500 ~~\$25,000~~ for each day until a ~~of~~
828 ~~continued~~ violation is resolved by order or judgment. Whenever
829 serious harm to human health, safety, and welfare; the
830 environment; or private or public property may occur prior to
831 completion of an administrative hearing or other formal
832 proceeding that which might be initiated to abate the risk of
833 serious harm, the department may obtain, ex parte, an injunction
834 without paying filing and service fees prior to the filing and
835 service of process.

836 Section 20. Paragraph (a) of subsection (3) of section
837 403.727, Florida Statutes, is amended to read:

838 403.727 Violations; defenses, penalties, and remedies.—

839 (3) Violations of the provisions of this act are punishable
840 as follows:

841 (a) Any person who violates ~~the provisions of~~ this act, the

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842 rules or orders of the department, or the conditions of a permit
843 is liable to the state for any damages specified in s. 403.141
844 and for a civil penalty of not more than \$75,000 ~~\$50,000~~ for
845 each day of continued violation or until a violation is resolved
846 by order or judgment, except as otherwise provided herein. The
847 department may revoke any permit issued to the violator. In any
848 action by the department against a small hazardous waste
849 generator for the improper disposal of hazardous wastes, a
850 rebuttable presumption of improper disposal shall be created if
851 the generator was notified pursuant to s. 403.7234; the
852 generator shall then have the burden of proving that the
853 disposal was proper. If the generator was not so notified, the
854 burden of proving improper disposal shall be placed upon the
855 department.

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

858 403.93345 Coral reef protection.—

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

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

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871 (b) For damage totaling more than an area of 1 square meter
872 but less than or equal to an area of 10 square meters, \$450 ~~\$300~~
873 per square meter; with aggravating circumstances, an additional
874 \$450 ~~\$300~~ per square meter; occurring within a state park or
875 aquatic preserve, an additional \$450 ~~\$300~~ per square meter.

876 (c) For damage exceeding an area of 10 square meters,
877 \$1,500 ~~\$1,000~~ per square meter; with aggravating circumstances,
878 an additional \$1,500 ~~\$1,000~~ per square meter; occurring within a
879 state park or aquatic preserve, an additional \$1,500 ~~\$1,000~~ per
880 square meter.

881 (d) For a second violation, the total penalty may be
882 doubled.

883 (e) For a third violation, the total penalty may be
884 tripled.

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

887 (g) The total of penalties levied may not exceed \$375,000
888 ~~\$250,000~~ per occurrence.

889 Section 22. Subsection (5) of s. 823.11, Florida Statutes,
890 is reenacted for the purpose of incorporating the amendment made
891 by this act to s. 376.16, Florida Statutes, in a reference
892 thereto.

893 Section 23. Subsection (5) of s. 403.077, subsection (2) of
894 s. 403.131, paragraph (d) of subsection (3) of s. 403.4154, and
895 subsection (5) of s. 403.860, Florida Statutes, are reenacted
896 for the purpose of incorporating the amendment made by this act
897 to s. 403.121, Florida Statutes, in references thereto.

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

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

902 Section 25. Subsection (2) of s. 403.7255, Florida
903 Statutes, is reenacted for the purpose of incorporating the
904 amendment made by this act to s. 403.161, Florida Statutes, in a
905 reference thereto.

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

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