

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

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BILL #: [HB 167](#)

TITLE: Former Phosphate Mining Lands

SPONSOR(S): McClure and Gentry

COMPANION BILL: None

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Judiciary](#)

21 Y, 0 N



[State Affairs](#)

18 Y, 7 N

SUMMARY

Effect of the Bill:

The bill establishes a defense from strict liability in lawsuits related to environmental pollution brought under the Water Quality Assurance Act (WQAA) if the lawsuit is related to pollution caused by a former phosphate mine and certain requirements are met. This strict liability defense applies to lawsuits brought by the Department of Environmental Protection as well as lawsuits brought by any other person. In order for a defendant to be exempt from strict liability as provided by the defense created by the bill, the defendant must prove:

- The condition giving rise to the lawsuit is a natural geological substance of a former phosphate mine;
- A notice that identifies the property as a former phosphate mine has been recorded in the official records of the county in which the property is located; and
- The Department of Health (DOH) has conducted a gamma radiation survey of the land parcel where the former phosphate mine is located.

For any lawsuit based on strict liability, negligence, or similar conduct related to an alleged discharge of hazardous substances or condition of pollution related to phosphate mining, the bill requires the plaintiff to include with the complaint a radiation survey that meets certain requirements.

Fiscal or Economic Impact:

The bill may have an indeterminate negative fiscal impact on DOH associated with conducting radiation surveys as required by the bill. The bill may also have an indeterminate fiscal impact on the private sector.

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ANALYSIS

EFFECT OF THE BILL:

Strict Liability Defense

For lawsuits related to environmental pollution that are brought under the [Water Quality Assurance Act](#) (WQAA), which imposes [strict liability](#) on a person or entity that is responsible for the pollution, the bill establishes a defense from strict liability if the lawsuit is related to pollution caused by a former phosphate mine and certain requirements are met. This strict liability defense applies to lawsuits brought by the Department of Environmental Protection (DEP) as well as lawsuits brought by any other person. Therefore, if the requirements for the strict liability defense are met, DEP or the person bringing the action must prove that the party alleged to be responsible for the pollution engaged in [negligence](#). (Section [1](#)).

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In order for a defendant to be exempt from strict liability and for the defense created by the bill to apply, the defendant must prove:

- The condition giving rise to the lawsuit is a natural geological substance of a former phosphate mine;
- A notice that identifies the property as a former phosphate mine has been recorded in the official records of the county in which the land at issue is located; and
- The Department of Health (DOH) has conducted a gamma [radiation survey](#) of the land parcel where the former phosphate mine is located. (Section [1](#)).

The bill defines “former phosphate mine” to mean an area of land upon which [phosphate mining](#) has been conducted and which may have been subject to a radiation survey and state reclamation requirements, but does not include a [phosphogypsum stack](#). (Section [2](#)).

To meet the notice requirement, the bill authorizes a landowner to record a notice in the official county records of the county in which the land is located that identifies the landowner’s property as a former phosphate mine. The bill requires recorded notices to be in substantially the following form:

NOTICE

This property is a former phosphate mine as defined in s. 378.213(2), Florida Statutes.

The bill specifies that such recording serves as notice that the land is a former phosphate mine. (Section [2](#)).

To meet the gamma radiation survey requirement, the bill also establishes a process whereby a landowner can request that DOH conduct such survey on a former phosphate land parcel. Upon such request, DOH must conduct the survey within 120 days to determine the radioactivity levels. The survey must document gamma radiation exposure measurements and the locations of the measurements. (Section [3](#)).

The bill requires DOH to provide a copy of the preliminary survey results to the landowner within 30 days after completion of the survey. Within 60 days after receipt of the survey, the landowner may request an additional survey based upon a reasonable belief that the survey was flawed or not representative of conditions on the site. The bill requires DOH to conduct one additional survey within 90 days after receipt of the request. The additional survey must meet the requirements described above and is deemed final within 90 days after completion. (Section [3](#)).

Phosphate Lawsuit Requirement

For any lawsuit based on strict liability, negligence, or similar conduct related to an alleged discharge of hazardous substances or condition of pollution related to phosphate mining (not just those lawsuits brought by the DEP), the bill requires the plaintiff to include with the complaint a radiation survey that meets certain requirements. The bill specifies that the lawsuits subject to this requirement include those that relate to the presence of mining overburden, solid waste from the extraction, or beneficiation of phosphate rock from a phosphate mine as well as any other similar claim related to the mining of phosphatic rock or [reclamation](#) of a mined area. (Section [4](#)).

The bill requires such surveys to be prepared by a person certified as either a [health physicist](#) by the American Board of Health Physics or as a [radiation protection technologist](#) by the National Registry of Radiation Protection Technologists. The survey must be representative and document the measured gamma radiation on the property, including background values determined in accordance with the Environmental Protection Agency’s Multi-agency Radiation Survey and Site Investigation Manual;¹ the locations of the measurements; the testing equipment; the

¹ The Multi-Agency Radiation Survey and Site Investigation Manual is a manual created with input from multiple federal agencies that provides information on planning, conducting, evaluating, and documenting building surface and surface soil final status radiological surveys for demonstrating compliance with dose or risk-based regulations or standards. Environmental Protection Agency (EPA), *Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)*, https://www.epa.gov/sites/default/files/2017-09/documents/marssim_manual_rev1.pdf (last visited Nov. 5, 2025).

testing methodology used, including the equipment calibration date and protocol; and the name of the person performing the survey and describe the person’s relevant training, education, and experience. The survey must be verified under penalty of perjury. (Section 4).

The effective date of the bill is July 1, 2026. (Section 5).

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate negative fiscal impact on DOH associated with conducting radiation surveys as required by the bill.

PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on landowners of former phosphate mines who may have a defense to strict liability lawsuits under the WQAA. The bill may have an indeterminate negative fiscal impact on plaintiffs associated with hiring a health physicist or radiation protection technologist.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Phosphate Mining

Phosphate rock contains the mineral phosphorus, an ingredient used in some fertilizers to help plants grow strong roots.² Phosphate rock contains small amounts of naturally-occurring radioactive³ elements, known as radionuclides, such as uranium and radium.⁴ The natural breakdown of uranium and radium results in radon, a radioactive gas that can move through the ground to accumulate in buildings over time.⁵

Prior to mining for phosphate, certain permits must be obtained, and the land must be surveyed and cleared to prepare the site for mining.⁶ The phosphate is mined by digging up the top 15 to 30 feet of earth to dig out the phosphate rock.⁷ The phosphate rock is dug out with clay and sand and then dumped into a pit to create a slurry. The slurry is sent to a beneficiation plant where the phosphate is then separated from the sand and clay.⁸ When phosphate rock is processed to make fertilizer, the phosphorous is removed by dissolving the rock in an acidic solution.⁹ The solid waste that is left behind is called phosphogypsum.¹⁰

Phosphogypsum stacks are any defined geographic area associated with a phosphoric acid production facility at which phosphogypsum is disposed of or stored, other than within a fully enclosed building, container, or tank.¹¹ To limit the public’s exposure to radon, which is created as a result of radium decay of phosphogypsum, the

² EPA, *Radioactive Material from Fertilizer Production*, <https://www.epa.gov/radtown/radioactive-material-fertilizer-production> (last visited Nov. 5, 2025).
³ These elements emit radiation at a specific rate that is measured in terms of a half-life. A half-life is the time required for half of the radioactive atoms present to decay. This process can take seconds or millions of years, depending on the radionuclide. EPA, *Radionuclides*, <https://www.epa.gov/radiation/radionuclides> (last visited Nov. 5, 2025).
⁴ EPA, *Radioactive Material from Fertilizer Production*, <https://www.epa.gov/radtown/radioactive-material-fertilizer-production> (last visited Nov. 5, 2025).
⁵ EPA, *Radionuclide Basics: Radon*, <https://www.epa.gov/radiation/radionuclide-basics-radon> (last visited Nov. 5, 2025).
⁶ Department of Environmental Protection (DEP), *Phosphate*, <https://floridadep.gov/water/mining-mitigation/content/phosphate> (last visited Nov. 5, 2025).
⁷ *Id.*
⁸ *Id.*
⁹ EPA, *Radioactive Material from Fertilizer Production*, <https://www.epa.gov/radtown/radioactive-material-fertilizer-production> (last visited Nov. 5, 2025).
¹⁰ EPA, *Phosphogypsum*, <https://www.epa.gov/radiation/phosphogypsum> (last visited Nov. 5, 2025).
¹¹ Section 403.4154(1)(d), F.S.

phosphogypsum stacks are located on private property, away from the public.¹² DEP regulates phosphogypsum stacks and phosphogypsum stack systems¹³ to ensure they are maintained to meet safety standards to prevent any harmful spills or discharges to surface or ground waters.¹⁴

Phosphate Mines in Florida

Phosphate mining is the fifth largest mining industry in the United States (U.S.) in terms of the amount of material mined.¹⁵ Florida is the largest known U.S. source of phosphates, accounting for more than 60 percent of U.S. production.¹⁶ Within Florida, phosphate mining primarily occurs in an area known as Bone Valley. This area is approximately 1.3 million acres that span Hardee, Hillsborough, Manatee, and Polk counties.¹⁷

There are 28 phosphate mines in Florida, of which 11 mines are currently active and 10 mines are 100 percent reclaimed and released from reclamation obligations.¹⁸ The remaining mines are either not started or are shut down. Phosphate mines typically range in size from approximately 5,000 to 100,000 acres.¹⁹ Approximately 25 to 30 percent of these lands are wetlands or other surface waters.²⁰

Reclamation

The Legislature has found that mining phosphate serves as an important economic interest for the state, but recognizes that it is a temporary land use.²¹ As such, all lands mined after July 1, 1975, are required to be reclaimed once mining is completed at a site.²² DEP is responsible for creating and enforcing rules regarding phosphate mining, including phosphate mine reclamation.²³

The process of reclamation begins with an applicant submitting a conceptual plan²⁴ application for reclamation at least six months prior to beginning site preparation²⁵ or mining operations,²⁶ whichever occurs first.²⁷ To be approved, a conceptual plan has to meet certain safety, water quality, flooding and draining, and waste disposal criteria.²⁸ Reclamation and restoration of mining lands must be completed within two years of the actual

¹² *Id.*; EPA, *Radioactive Material from Fertilizer Production*, <https://www.epa.gov/radtown/radioactive-material-fertilizer-production> (last visited Nov. 5, 2025).

¹³ “Phosphogypsum stack system” means the phosphogypsum stack, pile, or landfill, together with all pumps, piping, ditches, drainage conveyances, water-control structures, collection pools, cooling ponds, surge ponds, and any other collection or conveyance system associated with the transport of phosphogypsum from the plant to the phosphogypsum stack, its management at the stack, and the process-wastewater return to the phosphoric acid production or other process. This does not include conveyances within the confines of the fertilizer production plant. Section [403.4154\(1\)\(e\), F.S.](#)

¹⁴ Section [403.4155\(1\), F.S.](#)

¹⁵ EPA, *Radioactive Material from Fertilizer Production*, <https://www.epa.gov/radtown/radioactive-material-fertilizer-production> (last visited Nov. 5, 2025).

¹⁶ United States Geological Survey, *LCMAP Assessment: Phosphate Mining in Florida*, <https://geonarrative.usgs.gov/lcmap-assessment-phosphate-mining-florida/> (last visited Nov. 5, 2025).

¹⁷ DEP, *Phosphate*, <https://floridadep.gov/water/mining-mitigation/content/phosphate> (last visited Nov. 5, 2025).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section [378.202\(1\), F.S.](#)

²² Section [378.204, F.S.](#) These lands are referred to as mandatory land, whereas lands mined prior to July 1, 1975, were exempt from reclaim regulations and are called nonmandatory land.

²³ Section [378.205\(2\), F.S.](#)

²⁴ “Conceptual plan” means a graphic and written description of general activities to be undertaken across the whole mine to comply with the reclamation standards. Rule 62C-16.0021(5), F.A.C.

²⁵ “Site preparation” means those physical activities involving clearing or modification of the land surface conducted before initiating mining or mining operations, excluding prospecting, or agricultural practices or agricultural activities that are not initiated to directly serve future mining operations. Rule 62C-16.0021(20), F.A.C.

²⁶ “Mining operation” means those physical activities other than prospecting and site preparation which are necessary for extraction, waste disposal, storage, or dam maintenance prior to abandonment. Rule 62C-16.0021(10), F.A.C.

²⁷ Rule 62C-16.0032, F.A.C.

²⁸ Rule 62C-16.0051, F.A.C.

completion of mining operations.²⁹ Each year on or before March 1, after the approval of a conceptual reclamation plan, each operator is required to submit an annual mining and reclamation report describing the mining and reclamation activities for the previous calendar year and the proposed mining and reclamation for the current year.³⁰

During the process of reclamation, credentialed representatives of DEP are authorized to enter lands for the purpose of inspecting to ensure compliance with reclamation regulations.³¹ Once an operator of a phosphate mine has completed its reclamation and restoration requirements within a reclamation parcel, it may request a release of the reclamation parcel through writing.³² Within 90 days of receiving a written request for release, DEP will conduct a final inspection of the land. If DEP does not find that all the reclamation and restoration requirements have been met, it will notify the operator of the deficiencies that must be corrected.³³ When DEP approves of the reclamation and restoration of a parcel, an operator is released from their reclamation and tax obligations for the phosphate mining parcels.³⁴

Radiation Surveys

Radon that naturally occurs in soil is generally not a health concern; however, exposure to radon at higher levels and over prolonged periods of time can cause a serious hazard to human health by increasing the risk of developing lung cancer.³⁵ DOH takes samples from the soil, air, and water from phosphate mining parcels before mining begins and after reclamation has been completed to monitor the radioactivity of phosphate mining sites.³⁶ These samples include gamma radiation exposure measurements, soil radon emanation determinations, soil radium determinations, air monitoring, and surface and ground water monitoring of areas that are potentially impacted by mining activities.³⁷ DOH requires a mining company to pay fees for such monitoring.³⁸

Radiation Measurement Specialists

DOH requires any person who tests or mitigates the presence of radon for a fee to be certified by DOH.³⁹ Additionally, the American Board of Health Physics and the National Registry of Radiation Protection Technologists have certification programs for specialists engaging in radiation measurements.

A health physicist who is certified by the American Board of Health Physics must do the following to become certified:

- Obtain a bachelor’s or graduate degree from an accredited college or university in physical science, engineering, or biological science;
- Complete at least six years of responsible professional experience in health physics, with three years of that being applied health physics. A degree may be substituted for two years of experience;
- Submit a list of professional references;
- Submit a written report demonstrating that the candidate has produced professional level work in health physics; and
- Pass a two-part exam.⁴⁰

²⁹ Section [378.209\(1\), F.S.](#); Rule 62C-16.0051(12)(b)4., F.A.C..

³⁰ Rule 62C-16.0091(1), F.A.C.

³¹ Rule 62C-16.0067(1), F.A.C.

³² Rule 62C-16.0068(1), F.A.C.

³³ Rule 62C-16.0068(3), F.A.C.

³⁴ Rule 62C-16.0068(3)(b), F.A.C.

³⁵ EPA, *Phosphogypsum*, <https://www.epa.gov/radiation/phosphogypsum> (last visited Nov. 5, 2025).

³⁶ DOH, *Environmental Radiation Programs*, <https://www.floridahealth.gov/environmental-health/radiation-control/envrad/index.html> (last visited Nov. 5, 2025). Rule 64E-5.1002, F.A.C.

³⁷ Rule 64E-5.1002, F.A.C.

³⁸ Rule 64E-5.1003, F.A.C.; Gamma radiation exposure measurements are made at the rate of one per acre.

³⁹ Rule 64E-5.1203(2), F.A.C.

⁴⁰ American Board of Health Physics, *Prospectus for the American Board of Health Physics*, <https://www.aahp-abhp.org/wp-content/uploads/2024/10/Prospectus-for-the-ABHP-June-2024.pdf> (last visited Nov. 5, 2025).

A [radiation protection technologist](#) who is certified by the National Registry of Radiation Protection Technologists must do the following to become certified:

- Have a high school diploma or equivalent;
- Be at least 21 years old at the time of applying;
- Submit evidence of operational abilities as a Radiation Protection Technologist, showing at least five years of experience. Experience can be substituted for training or formal education; and
- Pass an examination.⁴¹

Legal Liability Standards

Negligence

One of the goals of the civil justice system is to redress tortious conduct, or “torts.” A tort is a wrong for which the law provides a remedy. To prevail in an ordinary negligence⁴² lawsuit, the party seeking the remedy must prove four elements: duty, breach, causation, and damages.⁴³

Duty of Care

The first of the four elements a plaintiff must prove to prevail in a negligence action is that the defendant owed the plaintiff a “duty of care” to do something or refrain from doing something. The existence of a legal duty is a threshold requirement that, if satisfied, “merely opens the courthouse doors.”⁴⁴ Whether a duty sufficient to support a negligence claim exists is a matter of law⁴⁵ determined by the court.⁴⁶ A duty may arise from various sources, including:

- Legislative enactments or administrative regulations;
- Judicial interpretations of such enactments or regulations;
- Other judicial precedent; and
- The general facts of the case.⁴⁷

In determining whether a duty arises from the general facts of the case, courts look to whether the defendant’s conduct foreseeably created a “zone of risk” that posed a general threat of harm to others—that is, whether there was a likelihood that the defendant’s conduct would result in the type of injury suffered by the plaintiff.⁴⁸ Such zone of risk defines the scope of the defendant’s legal duty, which is typically to either lessen the risk or ensure that sufficient precautions are taken to protect others from the harm the risk poses.⁴⁹ However, it is not enough that a

⁴¹ National Registry of Radiation Protection Technologists, *Examination Requirements, Fees and Schedules*, <https://www.nrrpt.org/index.cfm/m/7/> (last visited Nov. 5, 2025).

⁴² Negligence may be ordinary negligence, in which the defendant’s conduct must be evaluated for reasonableness, or negligence *per se*. Negligence *per se* is negligence as a matter of law – in other words, it is a legal doctrine that presumes a defendant was negligent when he or she violated a law, rule, or regulation that imposed a duty or prohibited an act to protect a particular class of persons. In a negligence *per se* claim, the plaintiff need only prove that the defendant’s violation was the cause in fact and the proximate cause of the plaintiff’s injury. *DeJesus v. Seaboard Coast Line R. Co.*, 281 So. 2d 198 (Fla. 1973).

⁴³ 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

⁴⁴ *Kohl v. Kohl*, 149 So. 3d 127 (Fla. 4th DCA 2014).

⁴⁵ A matter of law is a matter determined by the court, while a matter of fact must generally be determined by the jury. Matters of law include issues regarding a law’s application or interpretation, issues regarding what the relevant law is, and issues of fact reserved for judges to resolve. Legal Information Institute, *Question of Law*, https://www.law.cornell.edu/wex/question_of_law (last visited Nov. 5, 2025); Legal Information Institute, *Question of Fact*, https://www.law.cornell.edu/wex/Question_of_fact (last visited Nov. 5, 2025).

⁴⁶ *Kohl*, 149 So. 3d at 135; *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1110 (Fla. 2005).

⁴⁷ *Goldberg*, 899 So. 2d at 1105 (citing *Clay Elec. Co-op, Inc. v. Johnson*, 873 So. 2d 1182 (Fla. 2003)).

⁴⁸ *Kohl*, 149 So. 3d at 135 (citing *McCain v. Fla. Power Corp.*, 593 So. 2d 500 (Fla. 1992); *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001)).

⁴⁹ *Kohl*, 149 So. 3d at 135; *Whitt*, 788 So. 2d at 217.

risk merely exists or that a particular risk is foreseeable; rather, the defendant's conduct must create or control the risk before liability may be imposed.⁵⁰

Breach of the Duty of Care

The second element a plaintiff must prove is that the defendant "breached," or failed to discharge, the duty of care. Whether a breach occurred is generally a matter of fact for the jury to determine.⁵¹ Generally, in a case based on a claim of negligence, it is not merely enough to prove that an accident occurred, but that the defendant's conduct was "negligent," or that the defendant did not act in a reasonably prudent manner in the situation which led to the plaintiff's injury.

Causation

The third element a plaintiff must prove is that the defendant's breach of the duty of care "proximately caused" the plaintiff's injury. Whether or not proximate causation exists is generally a matter of fact for the jury to determine.⁵²

Florida follows the "more likely than not" standard in proving causation; thus, the inquiry for the factfinder is whether the defendant's negligence probably caused the plaintiff's injury.⁵³ In making such a determination, the factfinder must analyze whether the injury was a foreseeable consequence of the danger created by the defendant's negligent act or omission.⁵⁴ It is not required that the defendant's conduct be the exclusive cause, or even the primary cause, of the plaintiff's injury suffered; instead, the plaintiff must only show that the defendant's conduct substantially caused the injury.⁵⁵

Damages

The fourth and final element a plaintiff must prove to prevail in a negligence action is that the plaintiff suffered some harm, or "damages." Juries award "actual damages" to compensate an injured person for the damages the person actually suffered due to the defendant's negligence.⁵⁶ Such damages consist of both:

- "Economic damages," which are financial losses that can be easily quantified (such as lost wages, the cost to replace damaged property, or the cost of medical treatment); and
- "Non-economic damages," which are nonfinancial losses that cannot be easily quantified (such as pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, and loss of the capacity to enjoy life).⁵⁷

In certain limited situations, a court may also award "punitive damages," the purpose of which is to punish a defendant for bad behavior and deter future bad conduct, rather than to compensate the plaintiff for a loss.⁵⁸

Section [95.11\(3\)\(a\), F.S.](#), currently provides that general actions against a private citizen or entity founded on negligence are subject to a two-year statute of limitations.

⁵⁰ *Bongiorno v. Americorp, Inc.*, 159 So. 3d 1027 (Fla. 5th DCA 2015) (citing *Demelus v. King Motor Co. of Fort Lauderdale*, 24 So. 3d 759 (Fla. 4th DCA 2009)).

⁵¹ *Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009).

⁵² *Sanders v. ERP Operating Ltd. P'ship*, 157 So. 3d 273 (Fla. 2015).

⁵³ *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).

⁵⁴ *Id.* at 981-982.

⁵⁵ *Id.* at 982.

⁵⁶ *Birdsall v. Coolidge*, 93 U.S. 64 (1876); *St. Regis Paper Co. v. Watson*, 428 So. 2d 243 (Fla. 1983).

⁵⁷ Cf. [s. 766.202\(8\), F.S.](#)

⁵⁸ See ss. [768.72](#), [768.725](#), and [768.73, F.S.](#) (providing standards and requirements for awarding punitive damages).

Strict Liability

Strict liability is a legal concept in civil and criminal actions that holds a defendant liable for committing an action, regardless of the defendant's intent or mental state.⁵⁹ The legal theory of strict liability does not rely on the intent of a defendant or how his or her actions compare to what a reasonable person might have done; rather, strict liability is imposed on a defendant solely based on the nature of his or her alleged conduct.⁶⁰ Thus, the plaintiff in a civil action where strict liability applies does not even have to prove the defendant was negligent in order to prevail in the action. As such, in a matter where strict liability applies, the plaintiff does not have to prove any level of fault on the part of the defendant, but merely that he or she was injured due to the specific cause. For example, strict liability applies in a case where the plaintiff was bitten by a dog, regardless of whether the dog owner knew or should have known the dog would likely bite.⁶¹

There are various kinds of conduct that may give rise to strict liability, including:

- The possession of animals known to be harmful;
- Engaging in abnormally dangerous activities; and
- Products liability.⁶²

Water Quality Assurance Act

In 1983, the Legislature passed the Water Quality Assurance Act (WQAA)⁶³ to address pollution in surface and ground waters across the state.⁶⁴ To ensure the preservation of the state's water resources, the WQAA prohibits discharges or pollutants or hazardous substances into or upon the surface or ground waters of the state.⁶⁵ DEP is the agency authorized to establish and enforce programs to rehabilitate any polluted waters or lands.⁶⁶ As part of its authority, DEP may sue any person⁶⁷ to enforce the liabilities imposed by the WQAA.⁶⁸

Additionally, the WQAA creates a private cause of action for all damages resulting from a discharge⁶⁹ or other condition of pollution covered under the WQAA if the discharge was not specifically authorized by [ch. 403, F.S.](#)⁷⁰ The WQAA defines pollution as the presence on the land or in the waters of the state of pollutants in quantities that are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.⁷¹

The WQAA imposes strict liability on a polluter, meaning it is only necessary to show the prohibited discharge or other pollutive condition occurred, and it is not necessary to prove the polluter acted negligently.⁷² The WQAA

⁵⁹ Cornell Law School, *Strict Liability*, https://www.law.cornell.edu/wex/strict_liability (last visited Nov. 5, 2025).

⁶⁰ LexisNexis, Understanding the Interplay Between Strict Liability and Product Liability (Jan. 02, 2021), https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/understanding-the-interplay-between-strict-liability-and-products-liability?srltid=AfmBOoqW7FmmdmXqVZCcQnyMWo_5ImhljMtNITFGxWmEDsl6Up4nSWBK (last visited Nov. 5, 2025).

⁶¹ [Section 767.01\(1\), F.S.](#)

⁶² *Supra* at note 60.

⁶³ Sections [376.30-376.317, F.S.](#)

⁶⁴ Section [376.30, F.S.](#); University of Florida Institute for Food and Agricultural Sciences, *Water Quality Assurance Act*, https://www.piecenter.com/pep/wp-content/uploads/PEP_WQAA_Final.pdf (last visited Nov. 5, 2025).

⁶⁵ Section [376.302\(1\), F.S.](#)

⁶⁶ Section [376.30\(3\), F.S.](#)

⁶⁷ "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity. Section [376.301\(29\), F.S.](#)

⁶⁸ Section [376.303\(j\), F.S.](#)

⁶⁹ "Discharge" means any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, releasing, or dumping of any pollutant or hazardous substance which occurs and which affects lands and the surface and ground waters of the state not regulated by the Pollutant Discharge Prevention and Control Act. Section [376.301\(13\), F.S.](#)

⁷⁰ Section [376.313\(3\), F.S.](#); Chapter [403, F.S.](#), relates to environmental control, including pollution control, environmental regulation, and water supply and water treatment plants.

⁷¹ Section [376.301\(37\), F.S.](#)

⁷² Section [376.308\(1\), F.S.](#)

expressly imposes strict liability on an owner or operator of a facility or any person who caused a discharge or other polluting condition at a facility.⁷³

Because the WQAA imposes a strict liability standard, if a defendant is sued under the WQAA, the only defenses a defendant may plead and prove to avoid liability is that the occurrence was solely the result of any of the following conditions or a combination of conditions:

- An act of war;
- An act of government;⁷⁴
- An act of God;⁷⁵ or
- An act or omission of a third party under certain conditions.⁷⁶

Generally, liability under the WQAA is joint and several.⁷⁷ However, if more than one discharge has occurred and the damage is divisible and can be attributed to a particular defendant or defendants, each defendant is liable only for the costs associated with his or her damages.⁷⁸

RECENT LEGISLATION:

YEAR	BILL #/SHORT TITLE	HOUSE/SENATE SPONSOR(S)	OTHER INFORMATION
2025	CS/HB 585	Albert, Gentry <i>Burgess</i>	The bill died in the House. The Senate companion bill, CS/CS/SB 832, was amended and subsequently passed by the House, but died in House Returning Messages after the Senate refused to concur with the amendment and requested that the House recede from its amendment.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF	ANALYSIS
			DIRECTOR/ POLICY CHIEF	PREPARED BY
Judiciary Committee	21 Y, 0 N	11/5/2025	Kramer	Mathews
State Affairs Committee	18 Y, 7 N	11/19/2025	Williamson	Weiss

⁷³ Section [376.308\(1\)\(a\), F.S.](#)

⁷⁴ Section [376.308\(2\)\(b\), F.S.](#) This includes state, federal, or local acts of government, unless the person claiming the defense is a governmental body, in which case the defense is available only by acts of other governmental bodies.

⁷⁵ Section [376.308\(2\)\(c\), F.S.](#) This includes only unforeseeable acts exclusively occasioned by the violence of nature without the interference of any human agency.

⁷⁶ Section [376.308\(2\), F.S.](#) Defenses exist for an owner of a petroleum storage facility or a drycleaning or wholesale supply facility where certain circumstances apply.

⁷⁷ Section [376.308\(4\), F.S.](#); Joint and several liability refers to instances where there are multiple parties who are liable for an injury, and each party responsible for the injury may be liable to the extent he or she caused the injury. See Cornell Law School, *Joint and Several Liability*, https://www.law.cornell.edu/wex/strict_liability (last visited Nov. 3, 2025).

⁷⁸ *Id.*; see s. [768.81, F.S.](#)