

ENROLLED

2001 Legislature

HB 1635, First Engrossed

An act relating to environmental control; amending s. 369.25, F.S.; granting the Department of Environmental Protection additional enforcement powers for aquatic plant control; amending ss. 403.121, 403.131, 403.727, 403.860, F.S.; revising judicial and administrative remedies for violations of environmental laws; providing for administrative penalties; requiring the Department of Environmental Protection to report to the Legislature; providing for legislative review; amending s. 373.0693, F.S.; providing for membership on the Manasota Basin Board and for the resolution of tie votes; providing an effective date.

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

Section 1. Paragraph (k) is added to subsection (3) of section 369.25, Florida Statutes, to read:

369.25 Aquatic plants; definitions; permits; powers of department; penalties.--

(3) The department has the following powers:

(k) To enforce this chapter in the same manner and to the same extent as provided in ss. 403.121, 403.131, 403.141, and 403.161.

Section 2. Section 403.121, Florida Statutes, is amended to read:

403.121 Enforcement; procedure; remedies.--The department shall have the following judicial and

administrative remedies available to it for violations of this chapter, as specified in s. 403.161(1).

(1) Judicial remedies:

(a) The department may institute a civil action in a court of competent jurisdiction to establish liability and 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.

(b) The department may institute a civil action in a court of competent jurisdiction to impose and to recover a civil penalty for each violation in an amount of not more than \$10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense.

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

(2) Administrative remedies:

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

(b) If the department has reason to believe a violation has occurred, it may institute an administrative proceeding to order the prevention, abatement, or control of the conditions creating the violation or other appropriate corrective action. Except for violations involving hazardous wastes, asbestos, or underground injection, the department shall proceed administratively in all cases in which the department seeks administrative penalties that do not exceed \$10,000 per assessment as calculated in accordance with subsections (3), (4), (5), (6), and (7). The department shall not impose administrative penalties in excess of \$10,000 in a notice of violation. The department shall not have more than one notice of violation seeking administrative penalties pending against the same party at the same time unless the violations occurred at a different site or the violations were discovered by the department subsequent to the filing of a previous notice of violation.

(c) An administrative proceeding shall be instituted by the department's serving of a written notice of violation upon the alleged violator by certified mail. If the department is unable to effect service by certified mail, the notice of violation may be hand-delivered or personally served in accordance with chapter 48. The notice shall specify the provision of the law, rule, regulation, permit, certification, or order of the department alleged to be violated and the facts alleged to constitute a violation thereof. An order for corrective action, penalty assessment, or damages may be included with the notice. When the department is seeking to impose an administrative penalty for any violation by issuing a notice of violation, any corrective action needed to correct the violation or damages caused by the violation must be

pursued in the notice of violation or they are waived.  
However, no order shall become effective until after service and an administrative hearing, if requested within 20 days after service. Failure to request an administrative hearing within this time period shall constitute a waiver thereof, unless the respondent files a written notice with the department within this time period opting out of the administrative process initiated by the department to impose administrative penalties. Any respondent choosing to opt out of the administrative process initiated by the department in an action that seeks the imposition of administrative penalties must file a written notice with the department within 20 days after service of the notice of violation opting out of the administrative process. A respondent's decision to opt out of the administrative process does not preclude the department from initiating a state court action seeking injunctive relief, damages, and the judicial imposition of civil penalties.

(d) If a person timely files a petition challenging a notice of violation, that person will thereafter be referred to as the respondent. The hearing requested by the respondent shall be held within 180 days after the department has referred the initial petition to the Division of Administrative Hearings unless the parties agree to a later date. The department has the burden of proving with the preponderance of the evidence that the respondent is responsible for the violation. No administrative penalties should be imposed unless the department satisfies that burden. Following the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of an administrative penalty. When the department

seeks to enforce that portion of a final order imposing administrative penalties pursuant to s. 120.69, the respondent shall not assert as a defense the inappropriateness of the administrative remedy. The department retains its final-order authority in all administrative actions that do not request the imposition of administrative penalties.

(e) After filing a petition requesting a formal hearing in response to a notice of violation in which the department imposes an administrative penalty, a respondent may request that a private mediator be appointed to mediate the dispute by contacting the Florida Conflict Resolution Consortium within 10 days after receipt of the Initial Order from the administrative law judge. The Florida Conflict Resolution Consortium shall pay all of the costs of the mediator and for up to 8 hours of the mediator's time per case at \$150 per hour. Upon notice from the respondent, the Florida Conflict Resolution Consortium shall provide to the respondent a panel of possible mediators from the area in which the hearing on the petition would be heard. The respondent shall select the mediator and notify the Florida Conflict Resolution Consortium of the selection within 15 days of receipt of the proposed panel of mediators. The Florida Conflict Resolution Consortium shall provide all of the administrative support for the mediation process. The mediation must be completed at least 15 days before the final-hearing date set by the administrative law judge.

(f) In any administrative proceeding brought by the department, the prevailing party shall recover all costs as provided in ss. 57.041 and 57.071. The costs must be included in the final order. The respondent is the prevailing party when an order is entered awarding no penalties to the

department and such order has not been reversed on appeal or the time for seeking judicial review has expired. The respondent shall be entitled to an award of attorney's fees if the administrative law judge determines that the notice of violation issued by the department seeking the imposition of administrative penalties was not substantially justified as defined in s. 57.111(3)(e). No award of attorney's fees as provided by this subsection shall exceed \$15,000.

(g) ~~(d)~~ Nothing herein shall be construed as preventing any other legal or administrative action in accordance with law. Nothing in this subsection shall limit the department's authority provided in ss. 403.121, 403.131, and 403.141, to judicially pursue injunctive relief. When the department exercises its authority to judicially pursue injunctive relief, penalties in any amount up to the statutory maximum sought by the department must be pursued as part of the state court action and not by initiating a separate administrative proceeding. The department retains the authority to judicially pursue penalties in excess of \$10,000 for violations not specifically included in the administrative penalty schedule, or for multiple or multi-day violations alleged to exceed a total of \$10,000. The department also retains the authority provided in ss. 403.121, 403.131, and 403.141, to judicially pursue injunctive relief and damages, if a notice of violation seeking the imposition of administrative penalties has not been issued. The department has the authority to enter into a settlement, either before or after initiating a notice of violation, and the settlement may include a penalty amount different from the administrative penalty schedule. 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.

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

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

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

(b) For failure to obtain a required wastewater permit, other than a permit required for surface water discharge, the department shall assess a penalty of \$1,000. For a domestic or industrial wastewater violation not involving a surfacewater or groundwater quality violation, the department shall assess a penalty of \$2,000 for an unpermitted or unauthorized discharge or effluent-limitation exceedance. For an unpermitted or unauthorized discharge or effluent-limitation exceedance that resulted in a surfacewater or groundwater quality violation, the department shall assess a penalty of \$5,000.

(c) For a dredge and fill or stormwater violation, the department shall assess a penalty of \$1,000 for unpermitted or unauthorized dredging or filling or unauthorized construction of a stormwater management system against the person or persons responsible for the illegal dredging or filling, or unauthorized construction of a stormwater management system plus \$2,000 if the dredging or filling occurs in an Aquatic Preserve, Outstanding Florida Water, conservation easement, or Class I or Class II surfacewater, plus \$1,000 if the area dredged or filled is greater than one-quarter acre but less than or equal to one-half acre, and plus \$1,000 if the area dredged or filled is greater than one-half acre but less than or equal to one acre. The administrative penalty schedule shall not apply to a dredge and fill violation if the area dredged or filled exceeds one acre. The department retains the authority to seek the judicial imposition of civil penalties for all dredge and fill violations involving more than one acre. The department shall assess a penalty of \$3,000 for the failure to complete required mitigation, failure to record a required conservation easement, or for a water quality violation resulting from dredging or filling activities, stormwater construction activities or failure of a stormwater treatment facility. For stormwater management systems serving less than five acres, the department shall assess a penalty of \$2,000 for the failure to properly or timely construct a stormwater management system. In addition to the penalties authorized in this subsection, the department shall assess a penalty of \$5,000 per violation against the contractor or agent of the owner or tenant that conducts unpermitted or unauthorized dredging or filling.

(d) For mangrove trimming or alteration violations, the department shall assess a penalty of \$5,000 per violation against the contractor or agent of the owner or tenant that conducts mangrove trimming or alteration without a permit as required by s. 403.9328.

(e) For solid waste violations, the department shall assess a penalty of \$2,000 for the unpermitted or unauthorized disposal or storage of solid waste; plus \$1,000 if the solid waste is Class I or Class III (excluding yard trash) or if the solid waste is construction and demolition debris in excess of 20 cubic yards, plus \$1,000 if the waste is disposed of or stored in any natural or artificial body of water or within 500 feet of a potable water well, plus \$1,000 if the waste contains PCB at a concentration of 50 parts per million or greater; untreated biomedical waste; friable asbestos greater than 1 cubic meter which is not wetted, bagged, and covered; used oil greater than 25 gallons; or 10 or more lead acid batteries. The department shall assess a penalty of \$3,000 for failure to properly maintain leachate control; unauthorized burning; failure to have a trained spotter on duty at the working face when accepting waste; failure to provide access control for three consecutive inspections. The department shall assess a penalty of \$2,000 for failure to construct or maintain a required stormwater management system.

(f) For an air emission violation, the department shall assess a penalty of \$1,000 for an unpermitted or unauthorized air emission or an air-emission-permit exceedance, plus \$1,000 if the emission results in an air quality violation, plus \$3,000 if the emission was from a major source and the source was major for the pollutant in

violation; plus \$1,000 if the emission was more than 150 percent of the allowable level.

(g) For storage tank system and petroleum contamination violations, the department shall assess a penalty of \$5,000 for failure to empty a damaged storage system as necessary to ensure that a release does not occur until repairs to the storage system are completed; when a release has occurred from that storage tank system; for failure to timely recover free product; or for failure to conduct remediation or monitoring activities until a no-further-action or site-rehabilitation completion order has been issued. The department shall assess a penalty of \$3,000 for failure to timely upgrade a storage tank system. The department shall assess a penalty of \$2,000 for failure to conduct or maintain required release detection; failure to timely investigate a suspected release from a storage system; 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. The department shall assess a penalty of \$1,000 for failure to properly operate, maintain, or close a storage tank system.

~~(3)(a) In addition to any judicial or administrative remedy authorized by this part, the department may assess a noncompliance fee for failure of any owner or operator of a domestic wastewater treatment facility to comply with a permit condition that requires the submittal of monthly operating reports or the reporting of the characteristics of the waste stream or the effects of the facility on surface or ground water. For the first and second violations of the reporting requirements, the fee shall not be assessed until the~~

~~department has given the owner or operator at least 30 days to comply with the reporting requirement. The time shall not begin until the department has given the owner or operator written notice of the facts alleged to constitute the reporting violation, the specific provision of law, rule, or order alleged to have been violated by the owner or operator, the corrective action needed to bring the facility into compliance, and the potential penalties that may be imposed as a result of the owner's or operator's failure to comply with the notice. For subsequent violations, the department does not have to provide 30 days' written notice of the violations prior to assessing a noncompliance fee, except as follows:~~

~~1. If any additional reporting violations occur prior to the expiration of either of the 30 day notices issued by the department, the department must provide the owner or operator with 30 days' written notice to correct these violations as well.~~

~~2. Upon the renewal of the permit, the department shall reinstate the 30 day notice requirements provided in this subsection prior to assessing a noncompliance fee during the new permit period.~~

~~(b) At the time of assessment of a noncompliance fee, the department shall give the owner or operator written notice setting forth the amount assessed, the specific provision of law, rule, or order alleged to be violated, the facts alleged to constitute the violation, the corrective action needed to bring the party into compliance, and the rights available under chapter 120 to challenge the assessment. The assessment shall be final and effective unless an administrative proceeding is requested within 20 days after receipt of the written notice, and shall be enforceable pursuant to s.~~

~~120.69. Once the assessment has become final and effective, the department may refuse to issue, modify, transfer, or renew a permit to the facility until the fee has been paid.~~

~~(c) Before assessing a noncompliance fee, the department shall adopt rules to implement the provisions of this subsection. The rules shall establish specific procedures and assessment amounts for noncompliance fees authorized by paragraph (a). Noncompliance fees shall be set on a sliding scale based upon the type of violation, the degree of noncompliance, and the potential for harm. Such rules shall also authorize the application of adjustment factors subsequent to the initial assessment to increase or decrease the total amount assessed, such as the good faith efforts or the lack of good faith efforts of the owner or operator to comply with the reporting requirement, the lack of or degree of willfulness or negligence on the part of the owner or operator, the economic benefits associated with the owner's or operator's failure to comply, the owner's or operator's previous history of reporting violations, and the owner's or operator's ability to pay the noncompliance fee. No noncompliance fee shall exceed \$250, and total noncompliance fees assessed shall not exceed \$1,000 per assessment for all reporting violations attributable to a specific facility during any one month. No noncompliance fee may be assessed unless the department has, within 90 days of the reporting violation, provided the owner or operator written notice of the violation.~~

~~(d) The department's assessment of a noncompliance fee shall be in lieu of any civil action which may be instituted by the department in a court of competent jurisdiction to impose and recover civil penalties for any violation that~~

~~resulted in the fee assessment, unless the department initiates a civil action for nonpayment of a fee properly assessed pursuant to this subsection.~~

~~(e) Fees collected pursuant to this subsection shall be deposited in the Ecosystem Management and Restoration Trust Fund. The department may use a portion of the fund to contract for services to help in the collection of the fees assessed pursuant to this subsection.~~

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

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

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

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

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

(e) 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 department, \$1,000.

(f) For failure to prepare, submit, maintain, or use required reports or other required documentation, \$500.

(5) For failure to comply with any other departmental regulatory statute or rule requirement not otherwise

identified in this section, the department may assess a penalty of \$500.

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

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

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

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

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

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

penalty, including any economic benefit added to the scheduled administrative penalty, shall not exceed \$10,000.

(9) The administrative penalties assessed for any particular violation shall not exceed \$5,000 against any one violator, unless the violator has a history of noncompliance, the economic benefit of the violation as described in subsection (8) exceeds \$5,000, or there are multi-day violations. The total administrative penalties shall not exceed \$10,000 per assessment for all violations attributable to a specific person in the notice of violation.

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

(11) Penalties collected pursuant to this section shall be deposited in the Ecosystem Management and Restoration Trust Fund or other trust fund designated by statute and shall be used to fund the restoration of ecosystems, or polluted areas of the state, as defined by the department, to their condition before pollution occurred. The Florida Conflict Resolution Consortium may use a portion of the fund to administer the mediation process provided in paragraph (2)(e) and to contract with private mediators for administrative penalty cases.

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

Section 3. Section 403.131, Florida Statutes, is amended to read:

403.131 Injunctive relief, ~~cumulative~~ remedies.--

(1) The department may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this chapter or any rule, regulation, permit certification, or order; to enjoin any violation specified in s. 403.161(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the state and to protect human health, safety, and welfare caused or threatened by any violation.

(2) All the judicial and administrative remedies to recover damages and penalties in this section and s. 403.121 ~~are independent and cumulative except that the judicial and administrative remedies to recover damages~~ are alternative and mutually exclusive.

Section 4. Subsection (3) of section 403.727, Florida Statutes, is amended to read:

403.727 Violations; defenses, penalties, and remedies.--

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

(a) Any person who violates the provisions of this act, the rules or orders of the department, or the conditions of a permit is liable to the state for any damages specified in s. 403.141 and for a civil penalty of not more than \$50,000 for each day of continued violation, except as otherwise provided herein. The department may revoke any permit issued to the violator. In any action by the department against a small hazardous waste generator for the improper disposal of hazardous wastes, a rebuttable presumption of improper disposal shall be created if the generator was notified pursuant to s. 403.7234; the generator shall then have the burden of proving that the disposal was proper. If the generator was not so notified, the burden of proving improper disposal shall be placed upon the department.

(b) Any person who knowingly or by exhibiting reckless indifference or gross careless disregard for human health:

1. Transports or causes to be transported any hazardous waste, as defined in s. 403.703, to a facility which does not have a permit when such a permit is required under s. 403.707 or s. 403.722;

2. Disposes of, treats, or stores hazardous waste:

a. At any place but a hazardous waste facility which has a current and valid permit pursuant to s. 403.722;

b. In knowing violation of any material condition or requirement of such permit if such violation has a substantial likelihood of endangering human health, animal or plant life, or property; or

c. In knowing violation of any material condition or requirement of any applicable rule or standard if such

violation has a substantial likelihood of endangering human health, animal or plant life, or property;

3. Makes any false statement or representation or knowingly omits material information in any hazardous waste application, label, manifest, record, report, permit, or other document required by this act;

4. Generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with this act; or

5. Transports without a manifest, or causes to be transported without a manifest, any hazardous waste required by rules adopted by the department to be accompanied by a manifest

is, upon conviction, guilty of a felony of the third degree, punishable for the first such conviction by a fine of not more than \$50,000 for each day of violation or imprisonment not to exceed 5 years, or both, and for any subsequent conviction by a fine of not more than \$100,000 per day of violation or imprisonment of not more than 10 years, or both.

~~(e)1. As used in this paragraph, "Class II violation" means a violation of this part, or the rules promulgated pursuant to this part, which pertains to small quantity generators as defined by applicable department rules and which does not result in a discharge or serious threat of a discharge of hazardous waste to the environment, or does not involve the failure to ensure that groundwater will be protected or that hazardous waste will be destined for and~~

~~delivered to permitted facilities. Class II violations shall include, but need not be limited to, the failure to submit manifest exception reports in a timely manner, failure to provide a generator's United States Environmental Protection Agency identification number on the manifest, failure to maintain complete personnel training records, and failure to meet inspection schedule requirements for tanks and containers that hold hazardous waste.~~

~~2. In addition to any other judicial or administrative remedy authorized by this part, the department may assess a noncompliance fee for any Class II violation by a small quantity generator. For the first and second violations, the fee shall not be assessed until the generator has failed to comply after notice of noncompliance and has been given a reasonable time to comply. If the owner or operator fails after three or more notifications to comply with the requirement to correct the Class II violation, the department may assess the fee without waiting for compliance.~~

~~3. At the time of assessment of a noncompliance fee, the department shall give the small quantity generator written notice setting forth the amount assessed, the specific provision of law, rule, or order alleged to be violated, the facts alleged to constitute the violation, the corrective action needed to bring the party into compliance, and the rights available under chapter 120 to challenge the assessment. The assessment shall be final and effective unless an administrative proceeding is requested within 20 days after receipt of the written notice, and shall be enforceable pursuant to s. 120.69. Once the assessment has become final and effective, the department shall refuse to issue, modify, transfer, or renew a permit or issue an~~

identification number to the facility until the fee has been paid.

~~4. Before assessing any noncompliance fee, the department shall adopt rules to implement the provisions of this paragraph, which shall include a description of activities that constitute Class II violations and the setting of appropriate amounts for the noncompliance fees, based upon the type of violation, but not to exceed \$250. Total noncompliance fees assessed shall not exceed \$1,000 per assessment for all violations attributable to a specific facility during any one month.~~

~~5. The department's assessment of a noncompliance fee shall be in lieu of any civil action that may be instituted by the department in a court of competent jurisdiction to impose and recover civil penalties for any violation that resulted in the fee assessment, unless the department initiates a civil action for nonpayment of a fee properly assessed pursuant to this paragraph.~~

~~6. Noncompliance fees collected pursuant to this paragraph shall be deposited in the Ecosystem Management and Restoration Trust Fund. The department may use a portion of the fund to contract for services to help in the collection of fees assessed pursuant to this paragraph.~~

Section 5. Subsections (5) and (6) of section 403.860, Florida Statutes, are amended to read:

403.860 Penalties and remedies.--

(5) In addition to any judicial or administrative remedy authorized by this part, the department or a county health department that has received approval by the department pursuant to s. 403.862(1)(c) ~~shall may~~ assess administrative penalties for violations of this section in accordance with s.

~~403.121 a noncompliance fee for failure of any supplier of water of a public water system to comply with department requirements for the reporting, in the manner and time provided by department rule, of test results for microbiological, inorganic, or organic contaminants; or turbidity, radionucleides, or secondary standards.~~

~~(a) For the first and second violations of the microbiological reporting requirements, and for the first violation of other reporting requirements, the fee shall not be assessed until the department has given the supplier at least 30 days to comply with the reporting requirement. The time shall not begin until the department has given the supplier written notice of the facts alleged to constitute the reporting violation, the specific provision of law, rule, or order alleged to have been violated by the owner or operator, the corrective action needed to bring the facility into compliance, and the potential penalties that may be imposed as a result of the supplier's failure to comply with the notice. For subsequent violations of the microbiological reporting requirements, the department does not have to provide 30 day written notice of the violations prior to assessing a noncompliance fee, provided, however, that if any additional reporting violations occur prior to the expiration of either 30 day notice issued by the department, the department must provide the supplier with a 30 day written notice to correct those violations as well. Upon expiration of 36 months, the department shall reinstate the 30 day notice requirements provided in this subsection prior to assessing a noncompliance fee.~~

~~(b) At the time of assessment of a noncompliance fee, the department shall give the supplier written notice setting~~

~~forth the amount assessed, the specific provision of law, rule, or order alleged to be violated, the facts alleged to constitute the violation, the corrective action needed to bring the party into compliance, and the rights available under chapter 120 to challenge the assessment. The assessment shall be final and effective unless an administrative proceeding is requested within 20 days after receipt of the written notice, and shall be enforceable pursuant to s. 120.69.~~

~~(c) Before assessing a noncompliance fee, the department shall adopt rules to implement the provisions of this subsection. The rules shall establish specific procedures and assessment amounts for noncompliance fees authorized by paragraph (a). Noncompliance fees shall be set on a sliding scale based upon the type of violation, the degree of noncompliance, and the potential for harm. Such rules shall also authorize the application of adjustment factors subsequent to initial assessment to increase or decrease the total amount assessed, such as the good faith efforts or the lack of good faith efforts of the supplier to comply with the reporting requirements, the lack of or degree of willfulness or negligence on the part of the supplier, the economic benefits associated with the supplier's failure to comply with the reporting violation, the supplier's previous history of reporting violations, and the supplier's ability to pay the noncompliance fee.~~

~~(d) For microbiological reporting requirements, no noncompliance fee shall exceed \$250, and total noncompliance fees assessed shall not exceed \$1,000 per assessment for all reporting violations attributable to a specific facility during any one month.~~

~~(e) For violations of reporting requirements other than microbiological, the fee shall be no greater than \$50 per day for each day of violation, and the total amount assessed shall not exceed \$2,000.~~

~~(f) The department's assessment of a noncompliance fee shall be in lieu of any civil action which may be instituted by the department in a court of competent jurisdiction to impose and recover civil penalties for any violation that resulted in the fee assessment, unless the department initiates a civil action for nonpayment of a fee properly assessed pursuant to this subsection.~~

~~(g) No noncompliance fee may be assessed unless the department has, within 90 days of the reporting violation, provided the supplier written notice of the violation.~~

~~(6) The department is authorized to assess administrative penalties for failure to comply with the requirements of the Florida Safe Drinking Water Act.~~

~~(a) Prior to the assessment of an administrative penalty, the department shall provide the public water system a reasonable amount of time to complete the corrective action necessary to bring the system back into compliance.~~

~~(b)1. At the time of assessment of the administrative penalty, the department shall give the public water system notice setting forth the amount assessed, the specific provision of law, rule, or order alleged to be violated, the facts alleged to constitute the violation, the corrective action needed to bring the party into compliance, and the rights available under chapter 120 to challenge the assessment. The assessment shall be final and effective, unless an administrative hearing is requested within 20 days~~

~~after receipt of the written notice, and shall be enforceable pursuant to s. 120.69.~~

~~2. The department shall adopt rules to implement the provisions of this subsection. The rules shall establish specific procedures for implementing the penalties and shall identify assessment amounts. The rules shall authorize the application of adjustment factors for the purpose of increasing or decreasing the total amount assessed subsequent to initial assessment. Such factors may include the lack or degree of good faith to comply with the requirements, the lack or degree of willfulness or negligence on the part of the owner, the compliance history of the public water system, the economic benefit derived by the failure to comply with the requirements, and the ability to pay.~~

~~(c) The amount of the penalties assessed shall be as follows:~~

~~1. In the case of a public water system serving a population of more than 10,000, the penalty shall be not less than \$1,000 per day per violation.~~

~~2. In the case of any other public water system, the penalty shall be adequate to ensure compliance.~~

~~However, the total amount of the penalty assessed on any public water system may not exceed \$10,000 per violation.~~

Section 6. Two years after the effective date of this act, the Department of Environmental Protection shall submit a report to the Legislature describing the number of notices of violation issued by the department seeking the imposition of administrative penalties, the amount of administrative penalties obtained by the department, and the efficiencies gained from the provisions of this act.

ENROLLED

2001 Legislature

HB 1635, First Engrossed

Section 7. Subsection (7) of section 373.0693, Florida Statutes, is amended to read:

373.0693 Basins; basin boards.--

(7) At 11:59 p.m. on December 31, 1976, the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District, which is annexed to the Southwest Florida Water Management District by change of its boundaries pursuant to chapter 76-243, Laws of Florida, shall be formed into a subdistrict or basin of the Southwest Florida Water Management District, subject to the same provisions as the other basins in such district. Such subdistrict shall be designated initially as the Manasota Basin. The members of the governing board of the Manasota Watershed Basin of the Ridge and Lower Gulf Coast Water Management District shall become members of the governing board of the Manasota Basin of the Southwest Florida Water Management District. Notwithstanding other provisions in this section, beginning on July 1, 2001, the membership of the Manasota Basin Board shall be comprised of three members from Manatee County and three members from Sarasota County. Matters relating to tie votes shall be resolved pursuant to subsection (6) by the ex officio chair designated by the governing board to vote in case of a tie vote.

Section 8. This act shall take effect upon becoming a law.