



240018

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2009	.	
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The Committee on Judiciary (Constantine) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 403.9335, Florida Statutes, is created to read:

403.9335 Coral reef protection.-

(1) This section may be cited as the "Florida Coral Reef Protection Act."

(2) As used in this section, the term:

(a) "Aggravating circumstances" means operating, anchoring,



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12 or mooring a vessel in a reckless or wanton manner; under the
13 influence of drugs or alcohol; or otherwise with disregard for
14 boating regulations concerning speed, navigation, or safe
15 operation.

16 (b) "Coral" means species of the phylum Cnidaria found in
17 state waters including:

18 1. Class Anthozoa, including the subclass Octocorallia,
19 commonly known as gorgonians, soft corals, and telestaceans; and

20 2. Orders Scleractinia, commonly known as stony corals;
21 Stolonifera, including, among others, the organisms commonly
22 known as organ-pipe corals; Antipatharia, commonly known as
23 black corals; and Hydrozoa, including the family Millaporidae
24 and family Stylasteridae, commonly known as hydrocoral.

25 (c) "Coral reefs" mean:

26 1. Limestone structures composed wholly or partially of
27 living corals, their skeletal remains, or both, and hosting
28 other coral, associated benthic invertebrates, and plants; or

29 2. Hard-bottom communities, also known as live bottom
30 habitat or colonized pavement, characterized by the presence of
31 coral and associated reef organisms or worm reefs created by the
32 Phragmatopoma species.

33 (d) "Damages" means moneys paid by any person or entity,
34 whether voluntarily or as a result of administrative or judicial
35 action, to the state as compensation, restitution, penalty, or
36 mitigation for causing injury to or destruction of coral reefs.

37 (e) "Department" means the Department of Environmental
38 Protection.

39 (f) "Fund" means the Ecosystem Management and Restoration
40 Trust Fund.



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41 (g) "Person" means any and all persons, natural or
42 artificial, foreign or domestic, including any individual, firm,
43 partnership, business, corporation, and company and the United
44 States and all political subdivisions, regions, districts,
45 municipalities, and public agencies thereof.

46 (h) "Responsible party" means the owner, operator, manager,
47 or insurer of any vessel.

48 (3) The Legislature finds that coral reefs are valuable
49 natural resources that contribute ecologically, aesthetically,
50 and economically to the state. Therefore, the Legislature
51 declares it is in the best interest of the state to clarify the
52 department's powers and authority to protect coral reefs through
53 timely and efficient recovery of monetary damages resulting from
54 vessel groundings and anchoring-related injuries. It is the
55 intent of the Legislature that the department be recognized as
56 the state's lead trustee for coral reef resources located within
57 waters of the state or on sovereignty submerged lands unless
58 preempted by federal law. This section does not divest other
59 state agencies and political subdivisions of the state of their
60 interests in protecting coral reefs.

61 (4) The responsible party who knows or should know that
62 their vessel has run aground, struck, or otherwise damaged coral
63 reefs must notify the department of such an event within 24
64 hours after its occurrence. Unless otherwise prohibited or
65 restricted by the United States Coast Guard, the responsible
66 party must remove or cause the removal of the grounded or
67 anchored vessel within 72 hours after the initial grounding or
68 anchoring absent extenuating circumstances such as weather, or
69 marine hazards that would prevent safe removal of the vessel.



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70 The responsible party must remove or cause the removal of the
71 vessel or its anchor in a manner that avoids further damage to
72 coral reefs and shall consult with the department in
73 accomplishing this task. The responsible party must cooperate
74 with the department to undertake damage assessment and primary
75 restoration of the coral reef in a timely fashion.

76 (5) In any action or suit initiated pursuant to chapter 253
77 on the behalf of the Board of Trustees of the Internal
78 Improvement Trust Fund, or under chapter 373 or chapter 403 for
79 damage to coral reefs, the department may recover all damages
80 from the responsible party, including, but not limited to:

81 (a) Compensation for the cost of replacing, restoring, or
82 acquiring the equivalent of the coral reef injured and the value
83 of the lost use and services of the coral reef pending its
84 restoration, replacement or acquisition of the equivalent coral
85 reef, or the value of the coral reef if the coral reef cannot be
86 restored or replaced or if the equivalent cannot be acquired.

87 (b) The cost of damage assessments, including staff time.

88 (c) The cost of activities undertaken by or at the request
89 of the department to minimize or prevent further injury to coral
90 or coral reefs pending restoration, replacement, or acquisition
91 of an equivalent.

92 (d) The reasonable cost of monitoring the injured,
93 restored, or replaced coral reef for at least 10 years. Such
94 monitoring will not be required for a single occurrence of
95 damage to a coral reef damage totaling less than or equal to 1
96 square meter.

97 (e) The cost of enforcement actions undertaken in response
98 to the destruction or loss of or injury to a coral reef,



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99 including court costs, attorney's fees, and expert witness fees.

100 (6) The department may use habitat equivalency analysis as
101 the method by which the compensation described in subsection (5)
102 is calculated. The parameters for calculation by this method may
103 be prescribed by rule adopted by the department.

104 (7) In addition to the compensation described in subsection
105 (5), the department may assess, per occurrence, civil penalties
106 according the following schedule:

107 (a) For any anchoring of a vessel on a coral reef or for
108 any other damage to a coral reef totaling less than or equal to
109 an area of 1 square meter, \$150, provided that a responsible
110 party who has anchored a recreational vessel as defined in s.
111 327.02 that is lawfully registered or exempt from registration
112 pursuant to Chapter 328 is issued, at least once, a warning
113 letter in lieu of penalty; with aggravating circumstances, an
114 additional \$150; occurring within a state park or aquatic
115 preserve, an additional \$150.

116 (b) For damage totaling more than an area of 1 square meter
117 but less than or equal to an area of 10 square meters, \$300 per
118 square meter; with aggravating circumstances, an additional \$300
119 per square meter; occurring within a state park or aquatic
120 preserve, an additional \$300 per square meter.

121 (c) For damage exceeding an area of 10 square meters,
122 \$1,000 per square meter; with aggravating circumstances, an
123 additional \$1,000 per square meter; occurring within a state
124 park or aquatic preserve, an additional \$1,000 per square meter.

125 (d) For a second violation, the total penalty may be
126 doubled.

127 (e) For a third violation, the total penalty may be



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128 tripled.

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

131 (g) The total of penalties levied may not exceed \$250,000
132 per occurrence.

133 (8) To carry out the intent of this section, the department
134 may enter into delegation agreements with another state agency
135 or any coastal county with coral reefs within its jurisdiction.
136 In deciding to execute such agreements, the department must
137 consider the ability of the potential delegee to adequately and
138 competently perform the duties required to fulfill the intent of
139 this section. When such agreements are executed by the parties
140 and incorporated in department rule, the delegee shall have all
141 rights accorded the department by this section. Nothing herein
142 shall be construed to require the department, another state
143 agency, or a coastal county to enter into such an agreement.

144 (9) Nothing in this section shall be construed to prevent
145 the department or other state agencies from entering into
146 agreements with federal authorities related to the
147 administration of the Florida Keys National Marine Sanctuary.

148 (10) All damages recovered by or on behalf of this state
149 for injury to, or destruction of, the coral reefs of the state
150 that would otherwise be deposited in the general revenue
151 accounts of the State Treasury or in the Internal Improvement
152 Trust Fund shall be deposited in the Ecosystem Management and
153 Restoration Trust Fund in the Department of Environmental
154 Protection and shall remain in such account until expended by
155 the department for the purposes of this section. Moneys in the
156 fund received from damages recovered for injury to, or



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157 destruction of, coral reefs must be expended only for the
158 following purposes:

159 (a) To provide funds to the department for reasonable costs
160 incurred in obtaining payment of the damages for injury to, or
161 destruction of, coral reefs, including administrative costs and
162 costs of experts and consultants. Such funds may be provided in
163 advance of recovery of damages if the department determines.

164 (b) To pay for restoration or rehabilitation of the injured
165 or destroyed coral reefs or other natural resources by a state
166 agency or through a contract to any qualified person.

167 (c) To pay for alternative projects selected by the
168 department . Any such project shall be selected on the basis of
169 its anticipated benefits to the residents of this state who used
170 the injured or destroyed coral reefs or other natural resources
171 or will benefit from the alternative project.

172 (d) All claims for trust fund reimbursements under
173 paragraph (10) (a) must be made within 90 days after payment of
174 damages is made to the state.

175 (e) Each private recipient of fund disbursements shall be
176 required to agree in advance that its accounts and records of
177 expenditures of such moneys are subject to audit at any time by
178 appropriate state officials and to submit a final written report
179 describing such expenditures within 90 days after the funds have
180 been expended.

181 (f) When payments are made to a state agency from the fund
182 for expenses compensable under this subsection, such
183 expenditures shall be considered as being for extraordinary
184 expenses, and no agency appropriation shall be reduced by any
185 amount as a result of such reimbursement.



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186 (11) The department may adopt rules pursuant to ss. 120.536
187 and 120.54 to administer this section.

188 Section 2. Paragraph (b) of subsection (2) of section
189 403.1651, Florida Statutes, is amended to read:

190 403.1651 Ecosystem Management and Restoration Trust
191 Fund.—

192 (2) The trust fund shall be used for the deposit of all
193 moneys recovered by the state:

194 (b) For injury to or destruction of coral reefs, which
195 moneys would otherwise be deposited into the General Revenue
196 Fund or the Internal Improvement Trust Fund. The department may
197 enter into settlement agreements that require responsible
198 parties to pay a third party to fund projects related to the
199 restoration of a coral reef, to accomplish mitigation for injury
200 to a coral reef, or to support the activities of law enforcement
201 agencies related to coral reef injury response, investigation
202 and assessment. Participation of a law enforcement agency in the
203 receipt of funds through this mechanism shall be at the law
204 enforcement agency's discretion

205 Section 3. Subsection (3) of section 253.04, Florida
206 Statutes, is repealed.

207 Section 4. Section 380.0558, Florida Statutes, is
208 repealed.

209 Section 5. This act shall take effect July 1, 2009.

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212 ===== T I T L E A M E N D M E N T =====

213 And the title is amended as follows:

214 Delete everything before the enacting clause



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215 and insert:

216 A bill to be entitled

217 An act relating to coral reefs; creating s. 403.9335, F.S.;

218 citing the Florida Coral Reef Protection Act; providing

219 definitions; providing legislative intent; requiring responsible

220 parties to notify the department if their vessel runs aground or

221 damages a coral reef; requiring the responsible party to remove

222 the vessel; requiring the responsible party to cooperate with

223 the department to assess the damage and restore the coral reef;

224 authorizing the department to recover damages from the

225 responsible party; authorizing the department to use a certain

226 method to calculate compensation for damage of coral reefs;

227 authorizing the department to assess civil penalties;

228 authorizing the department to enter into delegation agreements;

229 providing that moneys collected from damages and civil penalties

230 for injury to coral reefs be deposited in the Ecosystem

231 Management and Restoration Trust Fund within the Department of

232 Environmental Protection; providing requirements; authorizing

233 the department to adopt rules; amending s. 403.1651, F.S.;

234 authorizing the department to enter into settlement agreements

235 that require responsible parties to pay another government

236 entity or nonprofit organization to fund projects consistent

237 with the conservation or protection of coral reefs; repealing s.

238 253.04(3), F.S., relating to the duty of Board of Trustees of

239 the Internal Improvement Trust Fund to protect state lands;

240 repealing s. 380.0558, F.S., relating to coral reef restoration;

241 providing an effective date.