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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2009	.	
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The Committee on Environmental Preservation and Conservation
(Constantine) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (a) and (d) of subsection (1) and
paragraph (c) of subsection (5) of section 380.0558, Florida
Statutes, are amended to read:

380.0558 Coral reef restoration.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Coral reefs" means:

1. Limestone structures composed in whole or in part of



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12 living stony corals, their skeletal remains, or both, and
13 hosting other coral, associated benthic invertebrates, and
14 plants; or

15 2. Hard-bottom communities, also known as live bottom
16 habitat or colonized pavement, characterized by the presence of
17 stony coral and associated reef organisms or worm reefs created
18 by the Phragmatopoma species ~~the assemblage of corals and other~~
19 ~~organisms that are actively building three-dimensional reef~~
20 ~~structures off the southern coast of Florida.~~

21 (d) "Natural resources" means land, air, water,
22 groundwater, drinking water supplies, fish and their habitats,
23 wildlife and their habitats, biota, and other such resources
24 belonging to, managed by, held in trust by, appertaining to, or
25 otherwise controlled by the state ~~State of Florida and situated~~
26 ~~in an area of critical state concern or offshore from an area of~~
27 ~~critical state concern.~~

28 (5) TRUST FUND EXPENDITURES.—Moneys in the fund received
29 from damages recovered for injury to, or destruction of, coral
30 reefs or natural resources shall be expended only for the
31 following purposes:

32 (c) To pay for alternative projects selected by the
33 Department of Environmental Protection as staff to the Board of
34 Trustees of the Internal Improvement Trust Fund. Any such
35 project shall be selected on the basis of its anticipated
36 benefits to the residents of this state who used the injured or
37 destroyed coral reefs or other natural resources or will benefit
38 from the alternative project.

39 Section 2. Section 380.29, Florida Statutes, is created to
40 read:



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41 380.29 Coral reef protection.-

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

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

45 (a) "Aggravating circumstances" means operating, anchoring,
46 or mooring a vessel in a reckless or wanton manner; under the
47 influence of drugs or alcohol; or otherwise with disregard for
48 boating regulations concerning speed, navigation, or safe
49 operation.

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

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

54 2. Orders Scleractinia, commonly known as stony corals;
55 Stolonifera, including, among others, the organisms commonly
56 known as organ-pipe corals; Antipatharia, commonly known as
57 black corals; and Hydrozoa, including the family Millaporidae
58 and family Stylasteridae, commonly known as hydrocoral.

59 (c) "Coral reefs" mean:

60 1. Limestone structures composed wholly or partially of
61 living stony corals, their skeletal remains, or both, and
62 hosting other coral, associated benthic invertebrates, and
63 plants; or

64 2. Hard-bottom communities, also known as live bottom
65 habitat or colonized pavement, characterized by the presence of
66 stony coral and associated reef organisms or worm reefs created
67 by the Phragmatopoma species.

68 (d) "Damages" means moneys paid by any person or entity,
69 whether voluntarily or as a result of administrative or judicial



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70 action, to the state as compensation, restitution, penalty, or
71 mitigation for causing injury to or destruction of coral reefs.

72 (e) "Department" means the Department of Environmental
73 Protection.

74 (f) "Responsible party" means the owner, operator, manager,
75 or insurer of any vessel.

76 (3) The Legislature finds that coral reefs are valuable
77 natural resources that contribute ecologically, aesthetically,
78 and economically to the state. Therefore, the Legislature
79 declares it is in the best interest of the state to clarify the
80 department's powers and authority to protect coral reefs through
81 timely and efficient recovery of monetary damages resulting from
82 vessel groundings and anchoring-related injuries. It is the
83 intent of the Legislature that the department, as staff to the
84 Board of Trustees of the Internal Improvement Trust Fund and by
85 virtue of its own regulatory powers, be recognized as the
86 state's lead trustee for coral reef resources associated with
87 sovereignty submerged lands unless preempted by federal law.
88 This section does not divest other state agencies and political
89 subdivisions of the state of their interests in protecting coral
90 reefs.

91 (4) The responsible party who knows or should know that
92 their vessel has run aground, struck, or otherwise damaged coral
93 reefs must notify the department of such an event within 24
94 hours after its occurrence. Unless otherwise prohibited or
95 restricted by the United States Coast Guard, the responsible
96 party shall remove or cause the removal of the grounded or
97 anchored vessel within 72 hours after the initial grounding or
98 anchoring absent extenuating circumstances, such as weather, sea



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99 state, or hazards that would prevent safe removal of the vessel.
100 The responsible party shall remove or cause the removal of the
101 vessel or its anchor in a manner that avoids further damage to
102 coral reefs and shall consult with the department to accomplish
103 this task. The responsible party shall cooperate with the
104 department to undertake damage assessment and primary
105 restoration of the coral reef in a timely fashion.

106 (5) In any action or suit initiated pursuant to chapter 253
107 or chapter 403 for damage to coral reefs, the department, acting
108 on its own behalf or on the behalf of the Board of Trustees of
109 the Internal Improvement Trust Fund, as appropriate, may recover
110 all damages from the responsible party, including, but not
111 limited to:

112 (a) Compensation for the cost of replacing, restoring, or
113 acquiring the equivalent of the coral reef injured and the value
114 of the lost use and services of the coral reef pending its
115 restoration, replacement or acquisition of the equivalent coral
116 reef, or the value of the coral reef if the coral reef cannot be
117 restored or replaced or if the equivalent cannot be acquired.

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

119 (c) The cost of activities undertaken by or at the request
120 of the department to minimize or prevent further injury to coral
121 or coral reefs pending restoration, replacement, or acquisition
122 of an equivalent.

123 (d) The reasonable cost of monitoring the injured,
124 restored, or replaced coral reef for at least 10 years.

125 (e) The cost of enforcement actions undertaken in response
126 to the destruction or loss of or injury to a coral reef,
127 including court costs, attorney's fees, and expert witness fees.



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128 (6) The department may use habitat equivalency analysis as
129 the method by which the compensation described in subsection (5)
130 is calculated. The parameters for calculation by this method may
131 be prescribed by rule adopted by the department.

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

135 (a) For failure to notify the department in accordance with
136 subsection (4), \$500.

137 (b) For any anchoring of a vessel on a coral reef on
138 sovereignty submerged lands or for any other damage to a coral
139 reef totaling less than or equal to an area of 1 square meter,
140 \$150; with aggravating circumstances, an additional \$150;
141 occurring within a state park or aquatic preserve, an additional
142 \$150.

143 (c) For damage totaling more than an area of 1 square meter
144 but less than or equal to an area of 10 square meters, \$300 per
145 square meter; with aggravating circumstances, an additional \$300
146 per square meter; occurring within a state park or aquatic
147 preserve, an additional \$300 per square meter.

148 (d) For damage exceeding an area of 10 square meters,
149 \$1,000 per square meter; with aggravating circumstances, an
150 additional \$1,000 per square meter; occurring within a state
151 park or aquatic preserve, an additional \$1,000 per square meter.

152 (e) For a second violation, the total penalty may be
153 doubled.

154 (f) For a third violation, the total penalty may be
155 tripled.

156 (g) For any violation after a third violation, the total



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157 penalty may be quadrupled.

158 (h) The total of penalties levied may not exceed \$250,000
159 per occurrence.

160 (8) To carry out the intent of this section, the department
161 may enter into delegation agreements with another state agency
162 or any coastal county with coral reefs within its jurisdiction.
163 In deciding to execute such agreements, the department must
164 consider the ability of the potential delegee to adequately and
165 competently perform the duties required to fulfill the intent of
166 this section. When such agreements are executed by the parties
167 and incorporated in department rule, the delegee shall have all
168 rights accorded the department by this section. Nothing herein
169 shall be construed to require the department, another state
170 agency, or a coastal county to enter into such an agreement.

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

175 (10) The department may adopt rules pursuant to ss. 120.536
176 and 120.54 to administer this section.

177 Section 3. Paragraph (b) of subsection (2) of section
178 403.1651, Florida Statutes, is amended to read:

179 403.1651 Ecosystem Management and Restoration Trust Fund.—

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

182 (b) For injury to or destruction of coral reefs, which
183 moneys would otherwise be deposited into the General Revenue
184 Fund or the Internal Improvement Trust Fund. The department may
185 enter into settlement agreements that require responsible



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186 parties to pay a third party to fund projects related to the
187 restoration of a coral reef, to accomplish mitigation for injury
188 to a coral reef, or to support the activities of law enforcement
189 agencies related to coral reef injury response, investigation
190 and assessment. Participation of a law enforcement agency in the
191 receipt of funds through this mechanism shall be at the law
192 enforcement agency's discretion

193 Section 4. Subsection (3) of section 253.04, Florida
194 Statutes, is repealed.

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

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

199 And the title is amended as follows:

200 Delete lines 2 - 6

201 and insert:

202 An act relating to coral reefs; amending s. 380.0558, F.S.;

203 revising definitions; providing that moneys in the Ecosystem

204 Management and Restoration Trust Fund within the Department of

205 Environmental Protection received from damages recovered for

206 injury to coral reefs are expended to pay for alternative

207 projects selected by the department as staff to the Board of

208 Trustees of the Internal Improvement Trust Fund; creating s.

209 380.29, F.S.; providing a short title; providing definitions;

210 providing legislative intent; requiring responsible parties to

211 notify the department if their vessel runs aground or damages a

212 coral reef; requiring the responsible party to remove the

213 vessel; requiring the responsible party to cooperate with the

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



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215 authorizing the department to recover damages from the
216 responsible party; authorizing the department to use a certain
217 method to calculate compensation for damage of coral reefs;
218 authorizing the department to assess civil penalties;
219 authorizing the department to enter into delegation agreements;
220 authorizing the department to adopt rules; amending s. 403.1651,
221 F.S.; authorizing the department to enter into settlement
222 agreements that require responsible parties to pay another
223 government entity or nonprofit organization to fund projects
224 consistent with the conservation or protection of coral reefs;
225 repealing s. 253.04, F.S., relating to the duty of Board of
226 Trustees of the Internal Improvement Trust Fund to protect state
227 lands;providing an effective date.
228