

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 1004

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Constantine

SUBJECT: Relating to Coral Reefs

DATE: March 25, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Uchino	Kiger	EP	Fav/CS
2.			GA	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The Committee Substitute (CS) authorizes the Department of Environmental Protection (department) to implement certain provisions of the CS to:

- Recover both compensatory damages and civil penalties for injuries to coral reefs from responsible parties.
- Use habitat equivalency analysis as a method to calculate damages.
- Require the responsible party to notify the department within 24 hours of running aground, and to remove the vessel within 72 hours, with provided exceptions.
- Delegate enforcement authority to other state agencies or coastal counties with coral reefs with their jurisdictions.
- Enter into settlement agreements with third parties to fund coral reef restoration and mitigation from funds paid by responsible parties.

The CS provides for an effective date of July 1, 2009.

The CS creates s. 380.29, and substantially amends ss. 253.04, 380.0558, and 403.1651, Florida Statutes.

II. Present Situation:

Florida sits at the northern end of a latitudinal band of the earth that has extensive coral reef growth and communities. Coral reefs are important to the ecological and economic wealth of Florida and are threatened by human activity. In addition to their biological diversity and abundance, Florida's reefs are estimated to provide 61,000 jobs in the fishing, diving and boating industries and \$5.7 billion dollars annually in sales and income from both commercial and private sector uses. Currently, the department does not have the authority to adequately protect these fragile and valuable resources, or the ability to have a timely, cost-efficient response to coral reef injuries and recovery of compensatory damages from responsible parties. Further, current penalty schedules do not address recovery for the loss of use of the resource due to injury.¹

Many provisions of the CS derive from the issues identified in the Southeast Florida Coral Reef Initiative's (SEFCRI) "Rapid Response and Restoration for Coral Reef Injuries in Southeast Florida: Guidelines and Recommendations." The SEFCRI team is comprised of local, state and federal agency and non-agency marine resource professionals, scientists, resource users and other stakeholders.²

Currently, most responsible parties cooperate with the department to address coral reef injuries caused by vessel groundings or anchoring; however, the lack of specificity regarding procedure and what the state is entitled to recover for these injuries often results in lengthy and costly legal settlement negotiations. In some cases, the lack of specificity for what is procedurally required has resulted in the responsible party adopting a "wait-and-see" position while the department proceeds to costly assessment and restoration activities. The department must then file suit in order to compel the responsible party to pay any penalties.

III. Effect of Proposed Changes:

Section 1 amends section 380.0558, F.S., to provide:

- An expanded definition of "coral reefs" to specifically identify limestone structures and hard-bottom communities (also known as live bottom habitat, colonized pavement) as coral reefs.
- Clarification that "natural resources" are any resources that are controlled by the state, not just those that are situated in an area of critical state concern or offshore from an area of critical state concern.
- Clarification that moneys collected from damages to coral reef injury or destruction can be used to pay for projects selected by the department acting as staff for the Board of Trustees of the Internal Improvement Trust Fund (Board).

Section 2 creates section 380.29, F.S., the Florida Coral Reef Protection Act, as follows:

- Providing definitions for: "aggravating circumstances," "coral," "coral reefs," "damages," "department," and "responsible party."
- Finding by the Legislature that coral reefs are valuable natural resources that contribute ecologically, aesthetically, and economically to the state and must be protected.

¹ Information provided by the Department of Environmental Protection.

² Information provided by the Department of Environmental Protection.

- Requiring notification within 24 hours to the department by responsible parties that know or should have known that they ran aground and damaged coral reefs.
- Requiring vessels that have run aground be removed within 72 hours of the occurrence, with exceptions for extenuating circumstances or when prohibited by the United States Coast Guard.
- Requiring that the responsible party must cooperate with the department to remove the vessel and assess the damage and restoration of the coral reef.
- Authorizing the department, on its own or acting on behalf of the Board, to recover all damages from the responsible party including actual and consequential damages, assessment costs, mitigation expenses, monitoring costs and any enforcement costs.
- Authorizing the department to adopt rules and parameters to use habitat equivalency analysis as the method to calculate the compensation required from the responsible party.
- Providing for civil penalties in addition to compensatory damages according to the following schedule:
 - \$500 for failure to notify the department within 24 hours of an occurrence;
 - \$150 for damage to coral reefs less than or equal to 1 square meter, with an additional \$150 for aggravating circumstances or damage occurring within a state park or an aquatic preserve;
 - \$300 per meter for damage to coral reefs greater than 1 square meter but less than or equal to 10 square meters, with an additional \$300 per meter for aggravating circumstances or damage occurring within a state park or an aquatic preserve;
 - \$1,000 per meter for damage in excess of 10 square meters, with an additional \$1,000 per meter for aggravating circumstances or damage occurring within a state park or an aquatic preserve;
 - Double the penalties for a second infraction;
 - Triple the penalties for a third infraction;
 - Quadruple the penalties for a fourth or subsequent infractions; and
 - Capped total assessed penalties at \$250,000 per occurrence.
- Authorizing the department to delegate the authority necessary to carry out the intent of this act to any state agency or coastal county with coral reefs within its jurisdiction that has the ability to enforce the requirements of this section and accepts this responsibility.

Section 3 amends section 403.1651, F.S., to authorize the department to enter into settlement agreements that direct responsible parties to pay third parties for restoration or mitigation projects, or to support law enforcement activities related to coral reef damage assessment.

Section 4 repeals subsection (3) of section 253.04, F.S., which provides for civil penalties for damages to coral reefs.

Section 5 provides for an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The costs to individuals who damage coral reefs will increase. The department is authorized to collect both compensatory damages and civil penalties from the responsible party. This will increase the total amount of penalties and damages that may be paid to the department. The actual costs for damaging a coral reef are unknown because they will be determined per occurrence, but will not exceed \$250,000. The CS will not affect boaters who do not damage coral reefs.

C. Government Sector Impact:

It is indeterminate how much revenues for the department might increase due to an enhanced ability to enforce the coral protection measures and recover both compensatory damages and civil penalties. The department is currently not able to recover the actual costs of assessment, restoration, mitigation or monitoring. The department reports that the CS should increase its ability to respond to and recover damages to coral reefs without necessitating organizational or fiscal changes. Enforcement costs would likely remain similar as the CS does not require any new enforcement activities, but they are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 24, 2009:

The CS replaced the originally filed bill and provides for coral reef protection in the following ways:

- Providing for definitions.
- Authorizing the Department Environmental Protection (department) to recover both compensatory damages and civil penalties for injuries to coral reefs from responsible parties.
- Authorizing the department to use habitat equivalency analysis as a method to calculate damages.
- Requiring the responsible party to notify the department with 24 hours of running aground, and to remove the vessel within 72 hours, with exceptions for extenuating circumstances or if prohibited by the United States Coast Guard.
- Allowing the department to delegate enforcement authority to other state agencies or coastal counties with coral reefs within their jurisdictions.
- Authorizing the department to enter into settlement agreements with third parties to fund coral reef restoration and mitigation from funds paid by responsible parties.

- B. **Amendments:**

None.