

By the Committees on Judiciary; and Environmental Preservation
and Conservation; and Senator Constantine

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1 A bill to be entitled
2 An act relating to coral reefs; creating s. 403.9335,
3 F.S.; creating the "Florida Coral Reef Protection
4 Act"; providing definitions; providing legislative
5 intent; requiring responsible parties to notify the
6 Department of Environmental Protection if their vessel
7 runs aground or damages a coral reef; requiring the
8 responsible party to remove the vessel; requiring the
9 responsible party to cooperate with the department to
10 assess the damage and restore the coral reef;
11 authorizing the department to recover damages from the
12 responsible party; authorizing the department to use a
13 certain method to calculate compensation for damage of
14 coral reefs; authorizing the department to assess
15 civil penalties; authorizing the department to enter
16 into delegation agreements; providing that moneys
17 collected from damages and civil penalties for injury
18 to coral reefs be deposited in the Ecosystem
19 Management and Restoration Trust Fund within the
20 Department of Environmental Protection; providing
21 requirements; authorizing the department to adopt
22 rules; amending s. 403.1651, F.S.; authorizing the
23 department to enter into settlement agreements that
24 require responsible parties to pay another government
25 entity or nonprofit organization to fund projects
26 consistent with the conservation or protection of
27 coral reefs; repealing s. 253.04(3), F.S., relating to
28 civil penalties for damage to coral reefs; repealing
29 s. 380.0558, F.S., relating to coral reef restoration;

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30 providing an effective date.

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

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

36 403.9335 Coral reef protection.—

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

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

40 (a) "Aggravating circumstances" means operating, anchoring,
41 or mooring a vessel in a reckless or wanton manner; under the
42 influence of drugs or alcohol; or otherwise with disregard for
43 boating regulations concerning speed, navigation, or safe
44 operation.

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

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

49 2. Orders Scleractinia, commonly known as stony corals;
50 Stolonifera, including, among others, the organisms commonly
51 known as organ-pipe corals; Antipatharia, commonly known as
52 black corals; and Hydrozoa, including the family Millaporidae
53 and family Stylasteridae, commonly known as hydrocoral.

54 (c) "Coral reefs" mean:

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

58 2. Hard-bottom communities, also known as live bottom

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59 habitat or colonized pavement, characterized by the presence of
60 coral and associated reef organisms or worm reefs created by the
61 *Phragmatopoma* species.

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

66 (e) "Department" means the Department of Environmental
67 Protection.

68 (f) "Fund" means the Ecosystem Management and Restoration
69 Trust Fund.

70 (g) "Person" means any and all persons, natural or
71 artificial, foreign or domestic, including any individual, firm,
72 partnership, business, corporation, and company and the United
73 States and all political subdivisions, regions, districts,
74 municipalities, and public agencies thereof.

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

77 (3) The Legislature finds that coral reefs are valuable
78 natural resources that contribute ecologically, aesthetically,
79 and economically to the state. Therefore, the Legislature
80 declares it is in the best interest of the state to clarify the
81 department's powers and authority to protect coral reefs through
82 timely and efficient recovery of monetary damages resulting from
83 vessel groundings and anchoring-related injuries. It is the
84 intent of the Legislature that the department be recognized as
85 the state's lead trustee for coral reef resources located within
86 waters of the state or on sovereignty submerged lands unless
87 preempted by federal law. This section does not divest other

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88 state agencies and political subdivisions of the state of their
89 interests in protecting coral reefs.

90 (4) The responsible party who knows or should know that
91 their vessel has run aground, struck, or otherwise damaged coral
92 reefs must notify the department of such an event within 24
93 hours after its occurrence. Unless otherwise prohibited or
94 restricted by the United States Coast Guard, the responsible
95 party must remove or cause the removal of the grounded or
96 anchored vessel within 72 hours after the initial grounding or
97 anchoring absent extenuating circumstances such as weather, or
98 marine hazards that would prevent safe removal of the vessel.
99 The responsible party must remove or cause the removal of the
100 vessel or its anchor in a manner that avoids further damage to
101 coral reefs and shall consult with the department in
102 accomplishing this task. The responsible party must cooperate
103 with the department to undertake damage assessment and primary
104 restoration of the coral reef in a timely fashion.

105 (5) In any action or suit initiated pursuant to chapter 253
106 on the behalf of the Board of Trustees of the Internal
107 Improvement Trust Fund, or under chapter 373 or this chapter for
108 damage to coral reefs, the department may recover all damages
109 from the responsible party, including, but not limited to:

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

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

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

121 (d) The reasonable cost of monitoring the injured,
122 restored, or replaced coral reef for at least 10 years. Such
123 monitoring is not required for a single occurrence of damage to
124 a coral reef damage totaling less than or equal to 1 square
125 meter.

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

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

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

136 (a) For any anchoring of a vessel on a coral reef or for
137 any other damage to a coral reef totaling less than or equal to
138 an area of 1 square meter, \$150, provided that a responsible
139 party who has anchored a recreational vessel as defined in s.
140 327.02 which is lawfully registered or exempt from registration
141 pursuant to chapter 328 is issued, at least once, a warning
142 letter in lieu of penalty; with aggravating circumstances, an
143 additional \$150; occurring within a state park or aquatic
144 preserve, an additional \$150.

145 (b) For damage totaling more than an area of 1 square meter

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146 but less than or equal to an area of 10 square meters, \$300 per
147 square meter; with aggravating circumstances, an additional \$300
148 per square meter; occurring within a state park or aquatic
149 preserve, an additional \$300 per square meter.

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

154 (d) For a second violation, the total penalty may be
155 doubled.

156 (e) For a third violation, the total penalty may be
157 tripled.

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

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

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

173 (9) Nothing in this section shall be construed to prevent
174 the department or other state agencies from entering into

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175 agreements with federal authorities related to the
176 administration of the Florida Keys National Marine Sanctuary.

177 (10) All damages recovered by or on behalf of this state
178 for injury to, or destruction of, the coral reefs of the state
179 that would otherwise be deposited in the general revenue
180 accounts of the State Treasury or in the Internal Improvement
181 Trust Fund shall be deposited in the Ecosystem Management and
182 Restoration Trust Fund in the department and shall remain in
183 such account until expended by the department for the purposes
184 of this section. Moneys in the fund received from damages
185 recovered for injury to, or destruction of, coral reefs must be
186 expended only for the following purposes:

187 (a) To provide funds to the department for reasonable costs
188 incurred in obtaining payment of the damages for injury to, or
189 destruction of, coral reefs, including administrative costs and
190 costs of experts and consultants. Such funds may be provided in
191 advance of recovery of damages if the department determines.

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

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

200 (d) All claims for trust fund reimbursements under
201 paragraph (a) must be made within 90 days after payment of
202 damages is made to the state.

203 (e) Each private recipient of fund disbursements shall be

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204 required to agree in advance that its accounts and records of
205 expenditures of such moneys are subject to audit at any time by
206 appropriate state officials and to submit a final written report
207 describing such expenditures within 90 days after the funds have
208 been expended.

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

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

216 Section 2. Paragraph (b) of subsection (2) of section
217 403.1651, Florida Statutes, is amended to read:

218 403.1651 Ecosystem Management and Restoration Trust Fund.—

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

221 (b) For injury to or destruction of coral reefs, which
222 moneys would otherwise be deposited into the General Revenue
223 Fund or the Internal Improvement Trust Fund. The department may
224 enter into settlement agreements that require responsible
225 parties to pay a third party to fund projects related to the
226 restoration of a coral reef, to accomplish mitigation for injury
227 to a coral reef, or to support the activities of law enforcement
228 agencies related to coral reef injury response, investigation
229 and assessment. Participation of a law enforcement agency in the
230 receipt of funds through this mechanism shall be at the law
231 enforcement agency's discretion.

232 Section 3. Subsection (3) of section 253.04, Florida

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233 Statutes, is repealed.

234 Section 4. Section 380.0558, Florida Statutes, is repealed.

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