

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

601-05036-09

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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.

31  
32 Be It Enacted by the Legislature of the State of Florida:

33  
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,  
65 civil penalty, or mitigation for causing injury to or  
66 destruction of coral reefs.

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

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

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

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

78 (3) The Legislature finds that coral reefs are valuable  
79 natural resources that contribute ecologically, aesthetically,  
80 and economically to the state. Therefore, the Legislature  
81 declares it is in the best interest of the state to clarify the  
82 department's powers and authority to protect coral reefs through  
83 timely and efficient recovery of monetary damages resulting from  
84 vessel groundings and anchoring-related injuries. It is the  
85 intent of the Legislature that the department be recognized as  
86 the state's lead trustee for coral reef resources located within  
87 waters of the state or on sovereignty submerged lands unless

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88 preempted by federal law. This section does not divest other  
89 state agencies and political subdivisions of the state of their  
90 interests in protecting coral 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 must 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, or  
99 marine hazards that would prevent safe removal of the vessel.  
100 The responsible party must 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 in  
103 accomplishing this task. The responsible party must cooperate  
104 with the 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 on the behalf of the Board of Trustees of the Internal  
108 Improvement Trust Fund, or under chapter 373 or this chapter for  
109 damage to coral reefs, the department may recover all damages  
110 from the responsible party, including, but not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

174 (9) Nothing in this section shall be construed to prevent

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175 the department or other state agencies from entering into  
176 agreements with federal authorities related to the  
177 administration of the Florida Keys National Marine Sanctuary.

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

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

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

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

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

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

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

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

217       Section 2. Paragraph (b) of subsection (2) of section  
218 403.1651, Florida Statutes, is amended to read:

219       403.1651 Ecosystem Management and Restoration Trust Fund.—

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

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



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233           Section 3. Subsection (3) of section 253.04, Florida  
234 Statutes, is repealed.

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

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