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1 A bill to be entitled
2 An act relating to coral reef protection; creating s.
3 380.29, F.S.; providing a short title; providing
4 legislative findings and intent; providing definitions;
5 requiring the responsible party to notify the Department
6 of Environmental Protection when a vessel impacts a coral
7 reef; providing requirements for the removal of vessels;
8 authorizing the department to recover specified damages
9 from the responsible party; authorizing the department to
10 use a certain methodology in calculating damages;
11 authorizing the department to assess civil penalties;
12 providing a limitation; authorizing the department to
13 enter into delegation agreements with other state agencies
14 or coastal counties for purposes of coral reef protection;
15 authorizing the department to adopt rules; providing
16 construction; amending s. 253.04, F.S.; deleting
17 provisions authorizing the department to develop a
18 schedule for the assessment of civil penalties for damage
19 to coral reefs; amending s. 380.0558, F.S.; revising
20 definitions of the terms "coral reefs" and "natural
21 resources"; revising authorization requirements for
22 certain expenditure of moneys in the Ecosystem Management
23 and Restoration Trust Fund; amending s. 403.1651, F.S.;
24 authorizing the department to enter into settlement
25 agreements requiring parties responsible for injury to or
26 destruction of coral reefs to pay a third party to fund
27 projects related to the restoration of coral reefs, the

28 mitigation of injuries to coral reefs, or specified law
 29 enforcement activities; providing an effective date.
 30

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

33 Section 1. Section 380.29, Florida Statutes, is created to
 34 read:

35 380.29 Coral reef protection.---

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

38 (2) The Legislature finds that coral reefs are valuable
 39 natural resources that contribute ecologically, aesthetically,
 40 and economically to the state. Therefore, the Legislature
 41 declares it is in the best interest of the state to clarify the
 42 power and authority of the Department of Environmental
 43 Protection to protect coral reefs through the timely and
 44 efficient recovery of monetary damages resulting from vessel
 45 groundings and anchoring-related injuries. It is the intent of
 46 the Legislature that the department, as staff to the Board of
 47 Trustees of the Internal Improvement Trust Fund and by virtue of
 48 its own regulatory powers, be recognized as the state's lead
 49 trustee for coral reef resources associated with sovereign
 50 submerged lands unless preempted by federal law.

51 (3) As used in this section, the term:

52 (a) "Aggravating circumstances" means operating,
 53 anchoring, or mooring a vessel in a reckless, careless, or
 54 wanton manner, under the influence of drugs or alcohol, or
 55 otherwise with disregard for boating regulations concerning

56 speed, navigation, or safe operation.

57 (b) "Coral" means species of the phylum Cnidaria found in
 58 state waters, including:

59 1. All species of the class Anthozoa, including subclass
 60 Octocorallia, commonly known as gorgonians, soft corals, and
 61 telestaceans;

62 2. The order Scleractinia, commonly known as stony corals;

63 3. The order Stolonifera, including the organisms commonly
 64 known as organpipe corals;

65 4. The order Antipatharia, commonly known as black corals;
 66 and

67 5. The order Hydrozoa, including the family Milleporidae
 68 and the family Stylasteridae, commonly known as hydrocorals.

69 (c) "Coral reef" means limestone structures, composed
 70 wholly or partially of living stony corals or stony coral
 71 skeletal remains, hosting other coral and associated benthic
 72 invertebrates and plants; hard-bottom communities, also known as
 73 live bottom habitat or colonized pavement, characterized by the
 74 presence of stony coral and associated reef organisms; or worm
 75 reefs created by Phragmatopoma species.

76 (d) "Damages" means money paid by any person or entity,
 77 whether voluntarily or as a result of administrative or judicial
 78 action, to the state as compensation, restitution, penalty, or
 79 mitigation for causing injury to or destruction of coral reefs.

80 (e) "Department" means the Department of Environmental
 81 Protection.

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

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84 (4) The responsible party for a vessel that has run
85 aground, struck, anchored on, or otherwise damaged a coral reef
86 must notify the department of such event within 24 hours after
87 its occurrence. Unless otherwise prohibited or restricted by the
88 United States Coast Guard, the responsible party shall remove or
89 cause the removal of the grounded or anchored vessel as soon as
90 possible and no later than 72 hours after the initial grounding
91 or anchoring absent extenuating circumstances such as weather,
92 sea state, or hazards that would prevent safe removal of the
93 vessel. The responsible party shall consult with the department
94 to remove or cause the removal of the vessel or its anchor in a
95 manner that avoids further damage to coral reefs and cooperate
96 with the department to undertake damage assessment and primary
97 restoration of the coral reef in a timely fashion.

98 (5) (a) In any action or suit initiated under chapter 253
99 or chapter 403 for damage to coral reefs, the department, acting
100 on its own behalf or on behalf of the Board of Trustees of the
101 Internal Improvement Trust Fund, as appropriate, may recover all
102 damages from the responsible party, including, but not limited
103 to:

104 1. Compensation for the cost of restoring, replacing, or
105 acquiring the equivalent of the coral reef injured and the value
106 of the lost use and services of the coral reef pending the
107 restoration, replacement, or acquisition or compensation
108 equivalent to the value of the coral reef injured if the coral
109 reef cannot be restored or replaced or its equivalent acquired.

110 2. The cost of damage assessments, including staff time.

111 3. The cost of activities undertaken by or at the request

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112 of the department to minimize or prevent further injury to the
113 coral or coral reef pending restoration, replacement, or
114 acquisition of an equivalent.

115 4. The reasonable cost of monitoring appropriate to the
116 injured, restored, or replaced coral reef for a period of no
117 less than 10 years.

118 5. The cost of enforcement actions undertaken in response
119 to the destruction or loss of or injury to a coral reef,
120 including court costs, attorney's fees, and expert witness fees.

121 (b) The department may, by rule, use habitat equivalency
122 analysis to calculate compensation under this subsection,
123 including the parameters for such calculation.

124 (6) In addition to the compensation provided under
125 subsection (5), the department may assess civil penalties;
126 however, the total amount of penalties levied may not exceed
127 \$250,000 per occurrence, as follows:

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

130 (b) For any anchoring of a vessel on a coral reef on
131 sovereign submerged lands or for any other damage to a coral
132 reef totaling 1 square meter or less, provided the responsible
133 party has been issued at least one written warning, \$150; with
134 aggravating circumstances, an additional \$150; and occurring
135 within a state park or aquatic preserve, an additional \$150.

136 (c) For damage totaling more than 1 meter but less than or
137 equal to 10 square meters of reef area, \$300 per square meter;
138 with aggravating circumstances, an additional \$300 per square

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139 meter; and occurring within a state park or aquatic preserve, an
140 additional \$300 per square meter.

141 (d) For damage totaling more than 10 square meters of reef
142 area, \$1,000 per square meter; with aggravating circumstances,
143 an additional \$1,000 per square meter; and occurring within a
144 state park or aquatic preserve, an additional \$1,000 per square
145 meter.

146 (e) For a second violation, the total penalty may be
147 doubled.

148 (f) For a third violation, the total penalty may be
149 tripled.

150 (g) For any violation after a third violation, the total
151 penalty may be quadrupled.

152 (7) To carry out the intent of this section, the
153 department may enter into delegation agreements with another
154 state agency or any coastal county with coral reefs within its
155 jurisdiction. In any decision to execute such an agreement, the
156 department must consider the ability of the potential delegee to
157 adequately and competently perform the duties required to carry
158 out the intent of this section. When such agreements are
159 executed by the parties and incorporated in department rule, the
160 delegee shall have all rights accorded the department by this
161 section. This subsection does not require the department, a
162 state agency, or a coastal county to enter into such an
163 agreement.

164 (8) The department may adopt rules pursuant to ss.
165 120.536(1) and 120.54 to administer this section.

166 (9) This section does not divest other state agencies and
 167 political subdivisions of the state of their interests in
 168 protecting coral reefs or prevent the department or other state
 169 agencies from entering into agreements with federal authorities
 170 related to the administration of the Florida Keys National
 171 Marine Sanctuary.

172 Section 2. Subsections (3) through (7) of section 253.04,
 173 Florida Statutes, are amended to read:

174 253.04 Duty of board to protect, etc., state lands; state
 175 may join in any action brought.--

176 ~~(3) The Department of Environmental Protection is~~
 177 ~~authorized to develop by rule a schedule for the assessment of~~
 178 ~~civil penalties for damage to coral reefs in state waters. The~~
 179 ~~highest penalty shall not exceed \$1,000 per square meter of reef~~
 180 ~~area damaged. The schedule may include additional penalties for~~
 181 ~~aggravating circumstances, not to exceed \$250,000 per~~
 182 ~~occurrence. A determination of aggravating circumstances shall~~
 183 ~~be based on factors relating to the cause of the damage such as,~~
 184 ~~but not limited to:~~

185 ~~(a) Absence of extenuating circumstances, such as weather~~
 186 ~~conditions or other factors beyond the control of the vessel~~
 187 ~~operator.~~

188 ~~(b) Disregard for safe boating practices.~~

189 ~~(c) Whether the vessel operator was under the influence of~~
 190 ~~alcohol or drugs.~~

191 ~~(d) Navigational error.~~

192 ~~(e) Disregard for speed limits or other boating~~
 193 ~~regulations.~~

194 ~~(f) Failure to use available charts and equipment or to~~
 195 ~~have such equipment on board.~~

196 ~~(g) Willful or intentional nature of the violation.~~

197 ~~(h) Previous coral reef damage caused by the vessel~~
 198 ~~operator.~~

199
 200 ~~Penalties assessed according to this section may be doubled for~~
 201 ~~damage to coral reefs located within the boundaries of John~~
 202 ~~Pennekamp Coral Reef State Park.~~

203 (3)~~(4)~~ Whenever any person or the agent of any person
 204 knowingly refuses to comply with or willfully violates any of
 205 the provisions of this chapter so that such person causes damage
 206 to the lands of the state or products thereof, including removal
 207 of those products, such violator is liable for such damage.
 208 Whenever two or more persons or their agents cause damage, and
 209 if such damage is indivisible, each violator is jointly and
 210 severally liable for such damage; however, if such damage is
 211 divisible and may be attributed to a particular violator or
 212 violators, each violator is liable only for that damage and
 213 subject to the fine attributable to his or her violation.

214 (4)~~(5)~~ If a person or the person's agent as described in
 215 subsection (2) fails to comply with an order of the board to
 216 remove or alter a structure on state-owned land, the board may
 217 alter or remove the structure and recover the cost of the
 218 removal or alteration from such person.

219 (5)~~(6)~~ All fines imposed and damages awarded pursuant to
 220 this section are a lien upon the real and personal property of
 221 the violator or violators, enforceable by the Department of

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222 Environmental Protection as are statutory liens under chapter
 223 85.

224 ~~(6)-(7)~~ All moneys collected pursuant to fines imposed or
 225 damages awarded pursuant to this section shall be deposited into
 226 the Internal Improvement Trust Fund created by s. 253.01 and
 227 used for the purposes defined in that section.

228 Section 3. Paragraphs (a) and (d) of subsection (1) and
 229 paragraph (c) of subsection (5) of section 380.0558, Florida
 230 Statutes, are amended to read:

231 380.0558 Coral reef restoration.--

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

233 (a) "Coral reefs" means limestone structures, composed
 234 wholly or partially of living stony corals or stony coral
 235 skeletal remains, hosting other coral and associated benthic
 236 invertebrates and plants; hard-bottom communities, also known as
 237 live bottom habitat or colonized pavement, characterized by the
 238 presence of stony coral and associated reef organisms; or worm
 239 reefs created by Phragmatopoma species ~~the assemblage of corals~~
 240 ~~and other organisms that are actively building three-dimensional~~
 241 ~~reef structures off the southern coast of Florida.~~

242 (d) "Natural resources" means land, air, water,
 243 groundwater, drinking water supplies, fish and their habitats,
 244 wildlife and their habitats, biota, and other such resources
 245 belonging to, managed by, held in trust by, appertaining to, or
 246 otherwise controlled by the state ~~of Florida and situated in an~~
 247 ~~area of critical state concern or offshore from an area of~~
 248 ~~critical state concern.~~

249 (5) TRUST FUND EXPENDITURES.--Moneys in the fund received
 250 from damages recovered for injury to, or destruction of, coral
 251 reefs or natural resources shall be expended only for the
 252 following purposes:

253 (c) To pay for alternative projects selected by the
 254 department as staff to the Board of Trustees of the Internal
 255 Improvement Trust Fund. Any such project shall be selected on
 256 the basis of its anticipated benefits to the residents of this
 257 state who used the injured or destroyed coral reefs or other
 258 natural resources or will benefit from the alternative project.

259 Section 4. Paragraph (b) of subsection (2) of section
 260 403.1651, Florida Statutes, is amended to read:

261 403.1651 Ecosystem Management and Restoration Trust
 262 Fund.--

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

265 (b) For injury to or destruction of coral reefs, which
 266 moneys would otherwise be deposited into the General Revenue
 267 Fund or the Internal Improvement Trust Fund. The department may
 268 enter into settlement agreements that require responsible
 269 parties to pay a third party to fund projects related to the
 270 restoration of coral reefs, mitigation of injuries to coral
 271 reefs, or, at the request of a law enforcement agency,
 272 activities related to coral reef injury response, investigation,
 273 and assessment.

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