



950462

LEGISLATIVE ACTION

Senate . House

.

.

Floor: 5/AD/2R

.

04/29/2009 02:31 PM

.

.

Senator Constantine moved the following:

Senate Amendment (with title amendment)

Between lines 1374 and 1375

insert:

Section 25. Section 403.9335, Florida Statutes, is created
to read:

403.9335 Coral reef protection.-

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

(2) This act applies to the sovereign submerged lands that
contain coral reefs as defined in this act off the coasts of
Broward, Martin, Miami-Dade, Monroe, and Palm Beach counties.



950462

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

14 (a) "Aggravating circumstances" means operating, anchoring,
15 or mooring a vessel in a reckless or wanton manner; under the
16 influence of drugs or alcohol; or otherwise with disregard for
17 boating regulations concerning speed, navigation, or safe
18 operation.

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

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

23 2. Orders Scleractinia, commonly known as stony corals;
24 Stolonifera, including, among others, the organisms commonly
25 known as organ-pipe corals; Antipatharia, commonly known as
26 black corals; and Hydrozoa, including the family Millaporidae
27 and family Stylasteridae, commonly known as hydrocoral.

28 (c) "Coral reefs" mean:

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

32 2. Hard-bottom communities, also known as live bottom
33 habitat or colonized pavement, characterized by the presence of
34 coral and associated reef organisms or worm reefs created by the
35 Phragmatopoma species.

36 (d) "Damages" means moneys paid by any person or entity,
37 whether voluntarily or as a result of administrative or judicial
38 action, to the state as compensation, restitution, penalty,
39 civil penalty, or mitigation for causing injury to or
40 destruction of coral reefs.

41 (e) "Department" means the Department of Environmental



950462

42 Protection.

43 (f) "Fund" means the Ecosystem Management and Restoration
44 Trust Fund.

45 (g) "Person" means any and all persons, natural or
46 artificial, foreign or domestic, including any individual, firm,
47 partnership, business, corporation, and company and the United
48 States and all political subdivisions, regions, districts,
49 municipalities, and public agencies thereof.

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

52 (4) The Legislature finds that coral reefs are valuable
53 natural resources that contribute ecologically, aesthetically,
54 and economically to the state. Therefore, the Legislature
55 declares it is in the best interest of the state to clarify the
56 department's powers and authority to protect coral reefs through
57 timely and efficient recovery of monetary damages resulting from
58 vessel groundings and anchoring-related injuries. It is the
59 intent of the Legislature that the department be recognized as
60 the state's lead trustee for coral reef resources located within
61 waters of the state or on sovereignty submerged lands unless
62 preempted by federal law. This section does not divest other
63 state agencies and political subdivisions of the state of their
64 interests in protecting coral reefs.

65 (5) The responsible party who knows or should know that
66 their vessel has run aground, struck, or otherwise damaged coral
67 reefs must notify the department of such an event within 24
68 hours after its occurrence. Unless otherwise prohibited or
69 restricted by the United States Coast Guard, the responsible
70 party must remove or cause the removal of the grounded or



950462

71 anchored vessel within 72 hours after the initial grounding or
72 anchoring absent extenuating circumstances such as weather, or
73 marine hazards that would prevent safe removal of the vessel.
74 The responsible party must remove or cause the removal of the
75 vessel or its anchor in a manner that avoids further damage to
76 coral reefs and shall consult with the department in
77 accomplishing this task. The responsible party must cooperate
78 with the department to undertake damage assessment and primary
79 restoration of the coral reef in a timely fashion.

80 (6) In any action or suit initiated pursuant to chapter 253
81 on the behalf of the Board of Trustees of the Internal
82 Improvement Trust Fund, or under chapter 373 or this chapter for
83 damage to coral reefs, the department may recover all damages
84 from the responsible party, including, but not limited to:

85 (a) Compensation for the cost of replacing, restoring, or
86 acquiring the equivalent of the coral reef injured and the value
87 of the lost use and services of the coral reef pending its
88 restoration, replacement, or acquisition of the equivalent coral
89 reef, or the value of the coral reef if the coral reef cannot be
90 restored or replaced or if the equivalent cannot be acquired.

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

92 (c) The cost of activities undertaken by or at the request
93 of the department to minimize or prevent further injury to coral
94 or coral reefs pending restoration, replacement, or acquisition
95 of an equivalent.

96 (d) The reasonable cost of monitoring the injured,
97 restored, or replaced coral reef for at least 10 years. Such
98 monitoring is not required for a single occurrence of damage to
99 a coral reef damage totaling less than or equal to 1 square



950462

100 meter.

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

104 (7) The department may use habitat equivalency analysis as
105 the method by which the compensation described in subsection (5)
106 is calculated. The parameters for calculation by this method may
107 be prescribed by rule adopted by the department.

108 (8) In addition to the compensation described in subsection
109 (5), the department may assess, per occurrence, civil penalties
110 according the following schedule:

111 (a) For any anchoring of a vessel on a coral reef or for
112 any other damage to a coral reef totaling less than or equal to
113 an area of 1 square meter, \$150, provided that a responsible
114 party who has anchored a recreational vessel as defined in s.
115 327.02 which is lawfully registered or exempt from registration
116 pursuant to chapter 328 is issued, at least once, a warning
117 letter in lieu of penalty; with aggravating circumstances, an
118 additional \$150; occurring within a state park or aquatic
119 preserve, an additional \$150.

120 (b) For damage totaling more than an area of 1 square meter
121 but less than or equal to an area of 10 square meters, \$300 per
122 square meter; with aggravating circumstances, an additional \$300
123 per square meter; occurring within a state park or aquatic
124 preserve, an additional \$300 per square meter.

125 (c) For damage exceeding an area of 10 square meters,
126 \$1,000 per square meter; with aggravating circumstances, an
127 additional \$1,000 per square meter; occurring within a state
128 park or aquatic preserve, an additional \$1,000 per square meter.



950462

129 (d) For a second violation, the total penalty may be
130 doubled.

131 (e) For a third violation, the total penalty may be
132 tripled.

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

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

137 (9) To carry out the intent of this section, the department
138 may enter into delegation agreements with another state agency
139 or any coastal county with coral reefs within its jurisdiction.
140 In deciding to execute such agreements, the department must
141 consider the ability of the potential delegee to adequately and
142 competently perform the duties required to fulfill the intent of
143 this section. When such agreements are executed by the parties
144 and incorporated in department rule, the delegee shall have all
145 rights accorded the department by this section. Nothing herein
146 shall be construed to require the department, another state
147 agency, or a coastal county to enter into such an agreement.

148 (10) Nothing in this section shall be construed to prevent
149 the department or other state agencies from entering into
150 agreements with federal authorities related to the
151 administration of the Florida Keys National Marine Sanctuary.

152 (11) All damages recovered by or on behalf of this state
153 for injury to, or destruction of, the coral reefs of the state
154 that would otherwise be deposited in the general revenue
155 accounts of the State Treasury or in the Internal Improvement
156 Trust Fund shall be deposited in the Ecosystem Management and
157 Restoration Trust Fund in the department and shall remain in



950462

158 such account until expended by the department for the purposes
159 of this section. Moneys in the fund received from damages
160 recovered for injury to, or destruction of, coral reefs must be
161 expended only for the following purposes:

162 (a) To provide funds to the department for reasonable costs
163 incurred in obtaining payment of the damages for injury to, or
164 destruction of, coral reefs, including administrative costs and
165 costs of experts and consultants. Such funds may be provided in
166 advance of recovery of damages.

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

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

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

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

184 (f) When payments are made to a state agency from the fund
185 for expenses compensable under this subsection, such
186 expenditures shall be considered as being for extraordinary



950462

187 expenses, and no agency appropriation shall be reduced by any
188 amount as a result of such reimbursement.

189 (12) The department may adopt rules pursuant to ss. 120.536
190 and 120.54 to administer this section.

191 Section 26. Paragraph (b) of subsection (2) of section
192 403.1651, Florida Statutes, is amended to read:

193 403.1651 Ecosystem Management and Restoration Trust Fund.—

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

196 (b) For injury to or destruction of coral reefs, which
197 moneys would otherwise be deposited into the General Revenue
198 Fund or the Internal Improvement Trust Fund. The department may
199 enter into settlement agreements that require responsible
200 parties to pay a third party to fund projects related to the
201 restoration of a coral reef, to accomplish mitigation for injury
202 to a coral reef, or to support the activities of law enforcement
203 agencies related to coral reef injury response, investigation
204 and assessment. Participation of a law enforcement agency in the
205 receipt of funds through this mechanism shall be at the law
206 enforcement agency's discretion.

207 Section 27. Subsection (3) of section 253.04, Florida
208 Statutes, is repealed.

209 Section 28. Section 380.0558, Florida Statutes, is
210 repealed.

211
212 Renumber subsequent sections

213
214
215 ===== T I T L E A M E N D M E N T =====



950462

216 And the title is amended as follows:

217 Delete line 126

218 and insert:

219 certain Class I landfills; creating s. 403.9335, F.S.;

220 creating the "Florida Coral Reef Protection Act"; providing

221 definitions; providing legislative intent; requiring responsible

222 parties to notify the Department of Environmental Protection if

223 their vessel runs aground or damages a coral reef; requiring the

224 responsible party to remove the vessel; requiring the

225 responsible party to cooperate with the department to assess the

226 damage and restore the coral reef; authorizing the department to

227 recover damages from the responsible party; authorizing the

228 department to use a certain method to calculate compensation for

229 damage of coral reefs; authorizing the department to assess

230 civil penalties; authorizing the department to enter into

231 delegation agreements; providing that moneys collected from

232 damages and civil penalties for injury to coral reefs be

233 deposited in the Ecosystem Management and Restoration Trust Fund

234 within the Department of Environmental Protection; providing

235 requirements; authorizing the department to adopt rules;

236 amending s. 403.1651, F.S.; authorizing the department to enter

237 into settlement agreements that require responsible parties to

238 pay another government entity or nonprofit organization to fund

239 projects consistent with the conservation or protection of coral

240 reefs; repealing s. 253.04(3), F.S., relating to civil penalties

241 for damage to coral reefs; repealing s. 380.0558, F.S., relating

242 to coral reef restoration;

243 providing an effective