

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility –

The bill increases personal accountability for vessel owners to secure or move their vessel from marinas before the onset of a tropical storm or hurricane. Vessel owners whose abandoned or derelict vessels cause property damage to a marina are liable for costs incurred by the marina as well as the state and local governments.

In the interest of protecting lives over personal property, the bill does not require vessel owners to move their vessels before a storm, nor does it allow marina owners to require vessel owners move or secure their vessels during a storm warning.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Vessel Owner Liability

Section 327.59, F.S., addresses the issue of the relationship between Florida's marinas and persons who dock their vessels in the marina and the responsibilities of each should there be the issuance of a hurricane watch or warning. This section of Florida statutes was enacted following the devastation to South Florida caused by Hurricane Andrew. This section was designed to address concerns raised by the marina owners and boat owners as to the extent each is liable for damages done to marinas resulting from a hurricane.

Subsection (1) of s. 327.59, F.S., provides that after June 1, 1994, marinas are prohibited from adopting, maintaining, or enforcing any policy pertaining to the evacuation of vessels from a marina following the issuance of a hurricane watch or warning. Marinas may not require the removal of a vessel from the marina following the issuance of a hurricane watch or warning since according to the statute, the protection of lives and the safety of the owners of vessels is placed before the interests of protecting property.

Subsection (2) of s. 327.59, F.S., clarifies the responsibilities of marinas and vessel owners in terms of when a hurricane watch or warning is issued. The ability of a vessel owner to remove a vessel voluntarily from a marina at any time is not restricted by the text in subsection (1). Neither is a marina owner restricted by the text in subsection (1) from dictating the kind of cleats, ropes, fenders, and other measures that must be used on vessels as a condition of using the marina.

The question being addressed leading to the enactment of s. 327.59, F.S., was whether boats damage a marina's docks during a storm or whether the docks damage boats should the docking system fail. Marina owners pursued statutory language which would have given them the right to evacuate vessels from their marina prior to the arrival of a hurricane. Vessel owners objected to empowering marina owners with the authority to require the evacuation of vessels in advance of pending storm, arguing that the safety of persons ought to take precedence over the protection of property. Boat owners argue that some boat owners would have no safe place to go should a storm approach the state, nor are their sufficient safe anchorages, havens, or "hurricane holes" to accommodate the large number of vessels needing to seek shelter and safety from the arrival of a hurricane.

Section 327.59, F.S., states that it is the policy of the state to protect lives over property should the state face a severe storm or hurricane.

In 1995, s. 327.59, F.S., was challenged by a marina owner in court and the case was dismissed. A subsequent appeal of the case upheld the lower court's dismissal ruling (Burklow & Associates v. Belcher, 719 So.2d 31). In that case, the marina owner sued the owners of sixteen boats stored at the marina for breach of contract and negligence, seeking to recover damages allegedly caused by the boat owners' failure to move their vessels from the marina before a hurricane had moved ashore. The Circuit Court dismissed the complaint and the marina owner appealed. The District Court of Appeal upheld the dismissal and found the following:

- The marina owner's complaint was within admiralty jurisdiction and that federal maritime law applied;
- Federal maritime law did not preempt s. 327.59, F.S., providing that marinas may not adopt, maintain, or enforce evacuation policies requiring vessels to be removed from marinas following the issuance of a hurricane watch or warning; and
- Boat owners had no duty to remove their boats upon the request of the marina owner in the period prior to the issuance of a hurricane watch or warning.

The District Court of Appeal further stated that an owner of a boat which is lawfully docked at a marina, under a valid slip lease agreement that does not require the removal of a boat in the event of a hurricane threat, does not owe a duty to the marina owner to remove his or her boat upon the request of the marina owner during the period prior to the issuance of any hurricane watch or warning. The court stated that requiring such a duty was not logical given the insufficient probability, at any time prior to the issuance of an official hurricane watch or warning, of a hurricane causing a boat owner's vessel to damage a marina. The court further stated that boat owners whose boats were stored at a marina did owe a duty to the marina owner to exercise reasonable care for the protection of the marina property, but that duty did not include any obligation to remove their boats upon the request of the marina owner.

The court left unaddressed the question of whether a so-called "hurricane clause" in slip lease agreements, requiring a boat owner to remove the vessel from a marina upon the threat of a hurricane, would be void as against the public policy stated in s. 327.59, F.S.

According to the Florida Department of Environmental Protection, there are nearly 2,000 marinas operating in Florida with hundreds of thousands of boaters using Florida's waterways every day. According to the Marine Industries Association of Florida, boating is a \$14.2 billion dollar industry that includes marinas, boatyards, and boaters.

Possessory Lien

Currently, marina owners have a possessory lien (a lien with the right to retain possession of another's property as security for a debt or obligation) on any vessel for storage fees, dockage fees, repairs, improvements, or other work-related storage charges. The possessory lien also covers expenses necessary for preservation of the vessel or expenses reasonably incurred in the sale or other disposition of the vessel.¹ The possessory lien attaches (begins) on the date the vessel is brought to the marina, or the date when the vessel first occupies rental space at the marina.²

Derelict Vessel Removal Program

Section 376.11., F.S., established the Derelict Vessel Removal Program in 1980 which is currently operated by the Florida Fish and Wildlife Conservation Commission (FWCC). The program is a financial assistance grant program, providing funds to coastal local governments for the reimbursement of the removal of derelict vessels from coastal waters of the state. An abandoned vessel becomes a derelict vessel only after all available means to have the rightful owner remove the vessel have failed.

¹ s. 328.17 (4), F.S.

² s. 328.17 (4), F.S.

An investigation is conducted by the local FWCC office and can involve court orders requiring the removal of the vessel. Funding for the program is appropriated by the Legislature each fiscal year. An application process provides for coastal local governments to submit a grant application to the FWCC. In 2002-2003, twelve coastal local governments received financial assistance for the removal of 47 derelict vessels and the removal of 6 larger derelict vessels (over 100 feet in length). Funding requests for the removal of derelict vessels have averaged about \$1.6 million. Currently only FWCC law enforcement officers have the authority to remove derelict vessels from public waters.³

EFFECT OF PROPOSED CHANGES

Marina Owner Waiver of Liability

The bill provides that after a tropical storm or hurricane watch has been issued, a marina owner, operator, employee, or agent may take further action to secure any vessel within the marina to minimize damage to a vessel, the marina property, and the environment. A hurricane watch indicates the possibility that a particular section of the coast may experience hurricane conditions within 36 hours. The National Oceanic and Atmospheric Administration (NOAA) notes that when a watch is issued, "protective measures should be initiated, especially those actions that require extra time such as securing a boat." A hurricane warning indicates that winds of at least 74 mph are expected within 24 hours or less.⁴

A tropical storm watch indicates the possibility that a particular section of the coast may experience tropical storm conditions within 36 hours. Tropical storm status is achieved when the storm reaches maximum sustained winds of at least 39 mph.⁵

Under the bill, a marina owner, operator, agent or employee: 1) may charge reasonable fees for securing vessels, 2) is not held liable for any damage to the vessel as a result of the storm, and 3) is held harmless as a result of such actions.

The marina owner may provide by contract notice to a vessel owner of their authority to secure or move the vessel, and their ability to charge reasonable fees for securing the vessel.

Possessory Lien

The bill extends the possessory lien that marinas currently have on a vessel to include any vessel in a wrecked, junked, or substantially dismantled condition that has been left docked, grounded, beached or otherwise abandoned at a marina without consent of the marina owner. The lien may claim expenses reasonably incurred for the removal and disposal of the wrecked vessel, and the lien begins from the date of the discovery of the vessel. A marina may sell the vessel, as well as any scrap. If the salvage value of the vessel does not cover the costs the marina reasonably incurred to remove the vessel, the marina may recover those costs from the vessel owner.

In order to satisfy the possessory lien, a marina owner must, in addition to providing notice to the vessel owner, provide notice to each person or entity that:

- Holds a security interest on the vessel as shown by records of the DHSMV with respect to state-titled vessels.
- Holds a preferred ship mortgage or has filed a claim of lien with the United States Coast Guard Vessel Documentation Center.
- Holds a security interest against the vessel under the Uniform Commercial Code.
- Has perfected a lien against the vessel by filing a judgment lien certificate.

³ s. 376.15 (2)(a), F.S.

⁴ <http://hurricanes.noaa.gov/>

⁵ <http://hurricanes.noaa.gov/>

In the event a vessel displays an out-of-state or foreign country identification, the marina must conduct a reasonable lien search of vessel registration records in the jurisdiction of registry. If the marina is unable to reasonably discover registration, it does not preclude the marina from selling or removing the vessel, or taking title of that vessel.

The marina owner may satisfy the lien by obtaining copies of applicable documents pertaining to the required notices listed above. The marina owner must give such notices at least 60 days prior to the sale of the vessel.

If fees, costs, and late payment interest are due and unpaid 120 days after the vessel owner and lien holders are given notice, the marina owner may sell the vessel and/or parts, or remove the vessel from the marina and state waters at the vessel owner's expense. The vessel owner or lien holder may pay the applicable costs and fees and thereby redeem possession of the vessel from the marina owner. The marina owner would no longer have liability to anyone with respect to the vessel.

Anyone purchasing a vessel to satisfy a lien assumes property of the vessel free of any claims other than a prior lien perfected under state or federal law.

Derelict Vessels

A derelict vessel is considered to be a vessel left in a wrecked, junked, or substantially dismantled condition or abandoned on any public waters or ports without the consent of the agency having jurisdiction over those waters.⁶ The bill references the statutory definition of a "vessel", which is identical to the definition of a vessel under maritime law, for the purpose of clarifying subsequent statutory references.⁷ The bill also amends the derelict vessel statute to include vessels that have been grounded on public or private property without the consent of the agency or property owner.

The Florida Coastal Protection Trust Fund was established to "provide a mechanism to have financial resources currently available for prevention of, and cleanup and rehabilitation after, a pollutant discharge, to prevent further damage by the pollutant, and to pay for damages."⁸ Money in the fund may be used to fund a grant to *coastal* local governments for the removal of derelict vessels from public waters.⁹ The bill extends this provision to *all* local governments.

The bill amends s. 376.15, F.S., to authorize Fish and Wildlife Conservation Commission (FWCC) law enforcement officers, as well as county sheriffs and deputies, and all other authorized law enforcement officers to remove derelict vessels from public waters. Any costs law enforcement incurs may be recovered against the owner of the vessel. The Department of Legal Affairs may represent the FWCC in such actions. Currently, only the FWCC has such authority. However, the FWCC reports that, because of lack of funding of the grant program, local governments have had to spend their own funds to remove derelict vessels.¹⁰ Local governments in southwest Florida have requested from the FWCC the authority to remove derelict vessels.¹¹

The bill amends the abandoned and derelict vessel provision of the public nuisance statute (Ch. 823, F.S.) to conform to the changes to s. 376.15, F.S.

Environmental Resource Permits

The bill exempts certain floating vessel platforms or floating boat lifts from environmental permitting requirements of Chapter 373, F.S., provided they are attached to a bulkhead on a parcel of land where there is no other docking structure and do not exceed a combined total of 1,000 square feet outside of an Outstanding Florida Water, 500 square feet within an Outstanding Florida Water that is not an

⁶ s. 376.15 (1), F.S.

⁷ Personal communication, Alan Richard, F.W.C.

⁸ s. 376.11 (1), F.S.

⁹ s. 376.11 (1) (g), F.S.

¹⁰ FWCC, Legislative Analysis, HB 1121

¹¹ FWCC, Legislative Analysis, HB 1121

aquatic preserve, or 200 square feet within an aquatic preserve. Structures erected where seagrasses adjacent to the dock or bulkhead are least dense, are also exempt. Exempt structures are also exempt from any local government regulations that may be more stringent.

C. SECTION DIRECTORY:

- Section 1: Amends s. 327.59, F.S., to allow an authorized marina employee to take steps and charge reasonable fees to secure any vessel in the marina after a tropical storm or hurricane watch has been issued and to require marina owners give contractual notice of such authority.
- Section 2: Amends s. 328.17, F.S., to grant marina owners a possessory lien on any vessel abandoned without the consent of the marina owner and to require marina owners give reasonable notice to all lien holders of a vessel. Sets deadlines for notice and satisfying of liens.
- Section 3: Amends s. 376.11 (4) (g), F.S., to extend grant program funding for the removal of derelict vessels to local governments.
- Section 4: Amends s. 376.15, F.S., to clarify a cross-reference to the statutory definition of a vessel; to include derelict vessels that are grounded on private property without the consent of the property owner; grants authority to the FWCC and other authorized law enforcement officers to remove derelict vessels from public waters; makes costs of derelict vessel removal recoverable against the vessel owner; directs the Department of Legal Affairs to represent the FWC in such actions.
- Section 5: Amends s. 403.813 (2) (s), F.S., to exempt certain floating vessel structures from environmental resource permitting.
- Section 6: Amends s. 705.101 (3), F.S., to include derelict vessels under the definition of abandoned property.
- Section 7: Amends s. 823.11, F.S., to clarify a cross-reference to the definition of vessel; includes vessels grounded on private property without the consent of the property owner as an abandoned and derelict vessel; designates the authority to remove abandoned and derelict vessels to FWCC and other authorized law enforcement officers; allows grant program funding for the removal of derelict vessels; directs the Department of Legal Affairs to represent the FWCC in such actions.
- Section 8: Provides an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill extends disbursement of grant funds dedicated to cleanup and removal of derelict vessels to local governments. The Florida Coastal Protection Trust Fund is designated to fund such cleanup projects, however, only to coastal local governments. The FWCC reports that the grant program has not been funded since 2002, and that the program generally received \$300,000

annually.¹² There are currently 751 reported derelict vessel cases in the state. The FWCC estimates a cost of \$1.48 million to remove these vessels.¹³

Under the bill, local law enforcement officers are given the authority to remove any abandoned or derelict vessels. The bill, however, makes costs associated with the removal recoverable against the vessel owner. The Department of Legal Affairs will incur any legal costs associated with such actions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill extends disbursement of grant funds dedicated to cleanup and removal of derelict vessels to all local governments. The Florida Coastal Protection Trust Fund funds such cleanup only to coastal local governments.

2. Expenditures:

Authorized local law enforcement officers are given the authority to remove any abandoned or derelict vessels. The bill, however, makes costs associated with the removal recoverable against the vessel owner.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Counties and cities may be required to spend funds to conduct the immediate removal of abandoned and derelict vessels. However, these costs are recoverable against the vessel owners.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill extends to January 1, 2006 the date by which the Department of Environmental Protection is to adopt a general permit by rule for floating vessel platforms and boat lifts that do not qualify for exemption from environmental resource permitting requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

¹² FWCC, Legislative Analysis, HB 1121

¹³ FWCC, Legislative Analysis, HB 1121

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2005, the Committee on Water & Natural Resources adopted five (5) amendments to the original bill. The amendments provide the following:

- Amendment 1: Clarifies the ability of law enforcement agencies to recover costs associated with the removal of derelict vessels.
- Amendment 2: Allows marina owners to give contractual notice of authority to secure or move a vessel and to charge reasonable fees.
- Amendment 3: Provides marina owners with a possessory lien on abandoned vessels and requires reasonable notice to certain entities in order to satisfy the lien.
- Amendment 4: Exempts certain floating vessel platforms from state and local environmental resource permitting.
- Amendment 5: Deletes provision in the bill relating to a boat owner's explicit liability for their vessel causing property damage to a marina if the boat owner failed to remove or secure the vessel after the issuance of a hurricane watch or warning.